THE EXACT

CONSTABLE,

WITH HIS

Original, and Power in all Caſes belonging to his OFFICE.

AS ALSO

The OFFICE of *Church-wardens*, *Overſeers* of the Poor, *Surveyors* of the *High-ways*, *Treaſurers* of the County Stock, Pariſh *Clerks*, Governors of *Fairs*, and other inferiour Officers, as they are at this day eſtabliſht both by the *Common Laws* and *Statutes* of this Kingdom.

By *E. W.* of *Grays-Inn*, Eſq;

The Sixth Edition.

Whereto is Added,

The Office of a *London* Conſtable.

Non Nobis ſolum nati ſumus, ſed partim PATRIÆ.

LONDON,

Printed for *J. E. Thomas Paſſenger*, and *Thomas Sawbridge*, 1682.

FH
MVSEVM
BRITANNICVM

TO THE
READER

THough it may ſeem Actum Agere, *a vain and impertinent attempt to load you with this Treatiſe, when others are, or at leaſt have been abroad, carrying the face of the ſame deſign, yet we think fit to remind thee (Courteous Reader) that as the firſt Edition of this preſent Book, was the firſt of this nature that was publiſhed after his Majeſties happy Reſtoration, ſo for its briefneſs, plainneſs, and ſoundneſs in what it delivered, it met with no ordinary welcome in the world: witneſs the ſeveral Editions thereof already diſpoſed of.*

wherefore that ſo uſeful and neceſſary a Guide might not be wanting to our honeſt-minded Country men, for their directions in thoſe Offices, whereunto their courſe of life may render them liable, we have not only though fit to Reprint it, but have alſo very carefully, and with much pains reviſed the ſame, in every part ſupplied the Authorities where they were wanting, and rectified them where they were miſquoted: Illuſtrated it with a clear and apt Method, and Enriched it with requiſite Additions of ſeveral ſheets; ſo that we doubt not but it will be found not inferior to any extant, but rather in many things to exceed whatever has been written on this ſubject, eſpecially in plainneſs, wherein all endeavours have been uſed to ſuit it to the underſtandings of the meaneſt Capacities, and yet to ground it on ſuch Authorities by a diligent Collection out of the Books of Statutes, Reports and other Authentique Law Books, that nothing relating to any of theſe Offices neceſſary to be known, might be committed, nor any thing Falſe, Repealed, or Illegal ſhould herein be Inſerted.

And

And thus, dear Country-men, I deliver it thus poliſht and refined into your hands, as a Looking-glaſs, where you may view your ſeveral Offices in their lively legal Colours and full proportions: that ye may in all ſuch Caſes know your Duties, and knowing them accordingly, do them without fear, favour, prejudice, or affection wherein you ſhall do God much ſervice, your country much good; and that this may be the fruit of my Labours herein, is the prayer of the Compiler, who has no other deſign than to caſt in his Mite towards eſtabliſhing the Admirable Government of this Nation, and contribute his Aſſiſtance to all thoſe Loyal and Active Subjects who conform to, and act under the ſame. Farewell.

THE EXACT CONSTABLE, &c.

CHAP. I.

Of the Nature and Original of the Conſtables, Office; the ſeveral Names and Kinds of Conſtables, and how they differ in Power.

IN all Exact Treatiſes on any Subject, the Laws of good method require us to begin with the *Etymology* of the word, and *Definition* of the thing intended to be diſcourſed of. To ſet forth the *Nature, Duty, and Power of the Conſtables Office*, is our preſent ſcope, and therefore firſt let us conſider the *Name*.

The Name (1.) *Skinner* in Etym. Verb. *Constable*

Constable (in Law-Latin *Constabularius*) some will have so called (1.) *quasi Comes stabuli*: But that seems not to bear any resemblance with the *Nature* of this Office; others more lucky Ghessers think it comes of the Particle *con* & *stabilis*, as being such Civil Ministers as together conduce very much to the *stability* and quiet of the whole Nation: But certainly, 'tis both improbable and vain to hunt for a *Latin* Pedigree, for a word no less a stranger to the *Roman* Language, than the Office it self to their Government: For in truth both name and thing are Natives of this Kingdom; the Title being compounded of two *Saxon* words (2.) *Cuninge* or *Cinge*, signifying a Prince or *King*; and *Stable* (or rather *Staple*) denoting a *Prop* or *Stay*, and so *Conningestable* (by Contraction *Constable*) is as much as to say the *Prop* or *Stay* of the *King*; which suits very well with his place and Duty: For what can more *establish* the Throne, or better *under prop*, and support the Government, than care to *preserve the Peace* in all places, and *seize* those that attempt to *violate it*.

(2.) Co. 4. Part Instit. fo. 123. *Lambard, fol.* 5.

And for the better warrant of this Etymo-

Etymology, it is to be noted (3.) That antiently there was a grand Officer of State, called *the High Conſtable* of *England*, to whom this Title was originally given, by reaſon of the great Authority wherewith he was inveſted, and though afterwards that haughty Office was laid aſide, as being apprehended too great and dangerous to be continued. Yet from thence the name is derived to this day, and though divided amongſt many, and ſhining with leſs luſtre and authority; yet ſtill it bears the ſame Appellation, and ſome marks of that illuſtrious Deſcent.

(3.) Lamb. Ibidem. St. 13. R. 2. ca. 12.

As for the time of the firſt Inſtitution of Conſtables, 'tis commonly referred to the Statute of *Wincheſter*, *Ca.* 1. (made in the 13. year of K. *Edw.* the Firſt, *Anno. Dom.* 1285.) Others ſuppoſe them erected not till about the beginning of the Reign of K. *Edward* the Third: But in truth it may be ſaid ——*Caput inter Nubila condit*, For the Authority by thoſe Statutes (4.) was grounded and granted upon the antient Laws and Cuſtoms of this Kingdom, practiſed long before the *Norman* Conqueſt, and intended and inſtituted for the Conſervation of the

The Original.

(4.) Vide Bacon. Caſes of Tr. p. 22.

Peace, and repreſſing all manner of Diſturbances and hurt to the people.

Wherefore for the better Underſtanding of the nature of this neceſſary Office, we muſt look back and take a view of that policy of our prudent Anceſtors, which firſt introduced it; which was this, When the Heptarchy (or Seven petty Kingdoms formerly in this Iſland) came to be reduced to one Empire, and pay Allegiance to ſingle Scepter; For the better Preſervation of the Peace preventing Thefts, and repreſſing Malefactors, it was agreed and ordained (5.) That all the Inhabitants ſhould caſt themſelves into diſtinct Societies, by ten men, and their reſpective Families in a Company: And that every of theſe ten men ſhould be ſurety and pledg for the good behaviour of the reſt: So that if any one of them committed any Crime, they ſhould ſee him forth-coming, or in default thereof be amerced; and thence theſe ſeveral Societies come in ſome places to be called (at this day) *Boroughs*, or rather *Boroes*, from the old word *Boroes*, ſignifying pledges or ſureties: And in other parts (from the number of ten Families thus aſſociated) Tithings;

(5.) Lambar. P. 6.

Tithings; And ſuch as were of Ill Credit, and could not get themſelves accepted in ſome ſuch *Boroe* or Tithing, were to be eſteemed dangerous perſons, unworthy of Society, and whereever they were apprehended, as Vagrants to be ſecured in Priſon.

And as ten times ten amounts to an hundred, ſo ten of theſe ſmaller Companies being joyned, and at certain times meeting together on buſineſs of importance concerning them all; ſuch general Aſſembly, or Court, and the precinct therennto belonging, came to be called a *Hundred*, and retains the ſame name to this day.

Likewiſe it being often neceſſary for each of theſe Tythings or *Boroes* to chuſe and prefer one of their number to act and ſpeak for, and on the behalf of them: All ſuch perſons was therefore in ſome places called, the *Boroes Ealder* (whom to this day in *Kent*, we call *Borſholder*) in other places the *Boroe*'s head, or *Head-boroe*, & in ſome, the Chief Pledg, which explains both the other names; for all three are of one Signification.

Tything men, &c. compared with Conſtables.

Now as touching the Office, that theſe *Borſholders*, Tythingmen, Headboroughs,

boroughs, and chief Pledges had, it was after a sort, & is still, where they remain, in effect the same with the Office of a Constable of a Town or Parish, which seems afterwards to be establisht upon a greater Increase of Inhabitants: for as after the division of the Land into Shires or Counties, the Charge of the whole County, was primarily committed to the Sheriff; but as the people grew more numerous, it being found too much for one Officer to inspect and govern so many; therefore in every Hundred there was one ordained with Authority to keep the Peace, who was called the *High Constable*; so afterwards the multitude being still augmented, for better assistance there came likewise to be one such *Conservator* of the Peace annually appointed in every *Boroe*, whom by reason of the smallness of his Precinct (for his power therein, is as great as the High-Constables) they called, *the petty Constable*; Yet some maintain, That the Office of Constable is essentially distinct from those of Tything-men, Headboroe, *&c.* Concerning which, it is our humble Opinion, That these Tything-men, *&c.* if they happen to be

in

in a precinct, where there is also a Constable, there such Constables are the Head Officers, and they are but as Assistants to the Constable when he is present, but are to attend the Service in his absence: And when there is no Constable, but only such Tything-men, &c. Then (6.) they are the only Officers for the Peace, Execution of Warrants, &c. Or where a Statute impowers them by name as well as Constables, or orders any thing to be done by the *Constable or other inferiour Officer*, in such Cases & things, their Offices and Authority are in a manner one and the same (*mutato nomine*) with that of Constable; so that upon the whole matter, all these Officers may seem fitly enough to be comprehended in this one word Constable, and all their Offices to fall in with, and be contained under, that Office. And accordingly for avoiding tediousness, and an impertinent Clutter of words, we shall handle them promiscuously in this discourse.

(6.) Vid. Dalton. J.P. ca. 1. p. 4 St. 1. Jac. c. 7.

From what hath been said, we may safely affirm with Mr. *Lambard*, *That a Constable is the Kings Majesties immediate Officer, for the support and maintenance of the peace within his Franchise*: Or

Definition.

Or perhaps more properly, *That he is a Civil Officer appointed for the maintenance of the Peace, and putting in Execution the Warrants and Precepts Issuing out of Court Leets, from Justices of the Peace and Coroners within the Precinct or Liberty for which he serves.*

Two Kinds.

Of Constables (as hath been intimated) are two sorts, High-Constables and Petty-Constables; the first are for the whole Hundred, the last only for some particular Parish, village, Hamlet, Tything, Borough, or Liberty, yet (to use the words (7.) of the Learned Sir *Francis Bacon*) though the High-Constables Authority hath the more ample Circuit, I do not find that the Petty Constable is subordinate to him for any Commandment that proceeds from his own Authority: But it is used, That the Warrants & Precepts of the Justices be delivered unto the High-Constables, who being few in number, may better attend the Justices, and then the High-Constables, by vertue of such Warrants (not their own Authority) make their Precepts over to the Petty Constables. And therefore, I doubt, the High-Constable was *ab origine*; but when the business of the Country

(7.) C.T. p.22. and 30.

Country encreaſed, and the Authority of Juſtices of the Peace became encreaſed by divers Statutes, then for convenience ſake the Office of High-Conſtables grew in uſe for receiving the Commands and Precepts from the Juſtices, and diſtributing them to the petty Conſtables as aforeſaid: And in Token of this the Election of High-Conſtables in moſt parts of the Kingdom, is by the appointment of the Juſtices of the Peace (moſt uſually at their General quarter Seſſions, or ſomtimes at petty Seſſions in their ſeveral Diviſions) whereas the Election of petty Conſtables is by the people.

CHAP. II.

where Conſtables are to be choſen, Who are liable to ſerve that Office, and who not, with the form of their Oath.

THE High-Conſtables (as hath been hinted) are uſually choſen at the Quarter Seſſions, and do commonly take their Oaths there, or may by Warrant

St. Win. Dalt. J P cap. 16.

warrant thence be ſworn before one Juſtice of Peace elſe-where, and in the ſame manner may they by the Seſſions be removed, and others put in their places.

Two Juſtices of the Peace, the one being of the *Quorum*, may appoint High Conſtables in *Wales* by a ſpecial Proviſion of the Statute, 34. *H.* 8. *Ca.* 26.

But the Choice of the petty Conſtables doth moſt properly belong to the Leet, where ſomtimes they are elected by the Steward himſelf by Cuſtome; but more frequently and regularly by the Inqueſts Preſentment; yet they may alſo in ſome Caſes be choſen by Juſtices of Peace in their quarter Seſſion, & as the Cuſtom of the place is, and that (as ſome ſay) for one or two years: But the ſounder opinion is, That this Office in its own nature is annual, and therefore when a man has ſerved a year, upon his Complaint to the Quarter-Seſſions, they ought to remove him and appoint another; the Oath is commonly adminiſtred to theſe petty Conſtables where they are choſen, or they may take it before a Juſtice at another time.

Bac. pag. 25.

By

By a late *Stat.* of the 14 *Car.* 2. *Ca.* 12. It is ordain'd, That upon the death or removal of any Constable out of the Parish, any two Justices may Elect and Swear a new one, to continue till the next Leet or Quarter Sessions, and then the Steward or Justices to chuse another, or confirm him that is in; and if any such Officer shall continue in his place above a year, the Justices may discharge him, and appoint another, till the Lord at his Leet shall place one to supply the Office.

But in other Cases Justices of the Peace are not to meddle in the chusing of a Constable, either in Sessions, or out of Sessions, where it hath time out of mind been used in a Court Leet, unless there hath been some neglect or misgovernment in the said Court; and in such Cases, the Kings-Bench is to decide the difference: If any Justice shall intermeddle to remove a Constable that hath been chosen by the Leet, the Leet may put him in again: for there hath always been a question of the Justices power herein, as you may read *Trinity* 9. *Jac. Banco Regis*, and in *Stiles* Reports 362. But it hath been

been agreed by all the Justices, That if the Leet do not chuse a fit man Constable, or neglect to give him his Oath, or doth any unlawful Act in the chusing him, the Justices may chuse and swear another, *Mich. 22. Car. Banc. Reg.*

Vid. Bulstr. Rep. 1. Part. f. 174.

It is said, That if Leets chuse unable or unfit men for petty Constables, it is a cause of forfeiture of such Leet, and the choice void, *Co.* 8. 42.

And therefore in the next place, let us see who are fit, and bound to serve this Office, which we shall set down, first *negatively*, secondly *affirmatively*.

1. Not Divines, Justices of Peace, Attorneys at Law, Physicians in respect of their necessary attendance elsewhere, neither Women, (whether Maids or Widows, though Housekeepers, & dwelling in Houses, whose Inhabitants used to serve) Mad-men, Infants, old decrepit persons, nor poor people; none of these are fit for, or compellable, to be made Constables.

2. *Affirmatively*, Every person chosen Constable ought to be *idoneus homo*, that is to say, a man apt and fit for the Execution of the said Office, which word in the intention of the Law, implies

plies these 3. necessary Qualifications.

1. Honesty, one that will execute his Office without malice or partiality.

2. Knowledge, one that hath in some competent measure skill to understand his Duty, and what belongs to his place; and therefore an Infant, Person *non sanæ Memoriæ*, or Ideot, cannot serve.

3. Ability as well in wealth as body, that so he may spare time, and attend the Execution of his Office diligently; wherefore it was wont to be given as a special direction from the King, to chuse of the ablest of the Inhabitants, as to Estates; which if duly observed, would be a great furtherance to the course of Justice throughout his Majesties Dominions; for poor indigent persons, when chosen Constables, either are ignorant what they may and should do, or are over-awed by their richer Neighbours, so as for fear to balk their Duties, or else are not able to spare time to execute their Office, as is required by Law: For 'tis to be understood that Constables have no allowance; but are bound to perform their Offices *gratis*, which may the rather be endured by men of indifferent Bacon. p. 25.

sub-

ſubſtance; becauſe it is but for a year, and that they are not tyed to keep or maintain any Servants or under-miniſters, but every one of the Kings people are bound to aid and aſſiſt them.

Where one is under one and twenty years of age (till which time he is an Infant in the Language and Conſideration of the Law) he ſhall not be compelled to ſerve, nor an old man above ſeventy, but may ſue out his Writ *de non ponendis in Aſſiſas & Jurat. Vide Fitz-Herb. Nat. Brev.*

Likewiſe the Kings Majeſties Servants in Ordinary are priviledged; becauſe they are always ſuppoſed to be Attendants upon his perſon, in his Court or Affairs, *Vid. Reſolution of the Judges*, 1633. But whether a ſufficient perſon that gets himſelf ſworn a Servant extraordinary, but lives conſtantly at home, and ſcarce ever does any actual duty, ſhall be exempted from this Office, is doubtful.

The Members of the Colledge of Phyſicians, *London*, are priviledged by their Charter and ſpecial Statute, and ſo alſo ('tis ſaid) are the Corporation of Pariſh-Clerks of the ſaid City; and if any of all theſe be choſen, they may be

be removed by order of Seſſions, or by Writ, or a Warrant from the King to the Sheriff of the County, and the High-Conſtable of the Hundred; of which ſee a preſident in *Dalt. J. P. fol.* 322.

So much for the perſon, but now as to that reſpect, which makes him liable to ſerve in this or that particnlar Tithing, concerning which note,

That a man is to ſerve this Office in reſpect of his perſonal abode, Reſidency or Habitation, and not in reſpect of his Lands: For if he keeps houſe in one place, & have an eſtate in another, he muſt ſerve where he lives, and not where his Eſtate lies; but if that Eſtate have a Tenant in it, a ſufficient man, able to ſerve the Office, he may be choſen and made to ſerve it; (even though the Landlord at the ſame time be in the ſame Office in the precinct, where he dwells) for they become capable of both ſerving in different reſpect, but the Landlord himſelf cannot be choſen to ſerve for that borough or Tithing wherein his Land lies, though in his own hands, if his dwelling houſe be out of it: For perhaps (whether if it be ſo or no, 'tis no matter, the Law rea-

reaſonably ſuppoſes it may ſo happen) he may be choſen to this or ſome other Office in the place where he lives, and a man can do ſervice with his body but in one place at one time.

Yet if the Caſe be ſo, That a man hath two ſeveral houſes in two diſtinct Leets, and do live ſometimes at the one houſe, and ſometimes at the other houſe, in this place he may be made an Officer at either of the Leets, within which he ſhall be dwelling, when the Leet is kept: And the next year, if he be removed to his other houſe, he may alſo be choſen there too: For a man may do Corporal Service well enough at two places at ſeveral times.

But if two Tithings be both within one Leet, and one man hath houſes in both the Tithings; in this caſe it ſeems doubtful whether, though he live in the one Tithing, he may not be compelled to ſerve in this Office for his Houſe in the other Tithing, eſpecially if it be near, and he keep no Tenant in his Houſe fit to bear the Office.

Cro. Rep. 1. Part. f. 283. Hence it appears, That a Cuſtom that the Office of Conſtables ſhould follow the Houſes, or that two or three in a Tithing or Town ſhould execute the

the ſame always is not good, nor according to Law, though formerly practiſed in ſome places.

But if any fit perſon (not exempted or priviledged as before) be lawfully choſen to the Office of Conſtable in a Leet, and refuſe to take the charge thereof upon him; he may for ſuch his contempt, be fined in the ſame Leet; or if he be choſen at the Seſſions, or by two Juſtices out of Seſſions, and ſhall afterwards refuſe to be Sworn, he is to be bound over to the next Aſſizes or Seſſions of the Peace, and there Indicted, Fined, and Impriſoned. Dalt.Ca. 16. B.81.

Yet note, a Conſtable may make a Deputy, or elſe how ſhould the place be ſupplied in caſe of Sickneſs, or other exigency: But if there be negligence or miſdemeanour committed by the Deputy, the Conſtable Elected ſhall be anſwerable for the ſame: But in caſe the firſt, when choſen, deſire to have a Deputy, and name a fit perſon, who accepts thereof, and is Sworn into the place, here the Deputy ſhall anſwer for himſelf: And of this kind are our hired Conſtables, frequent in and about *London*; yet it has been delivered for Law by the Judges, That this is practiſed Crawlys Caſe, 1 Part of Croo. Rep. f. 409.

practiſed rather by Tolleration than Law.

We ſhall conclude this Chapter with

The Form of the *Conſtables* Oath.

YOU ſhall well and truly ſerve our Soveraign Lord the King [and the Lord of the Mannor, *when Sworn at a Leet*] *in the Office of a Conſtable, and ſhall ſee the Kings Peace to be well and truly kept to the utmoſt of your power, you ſhall Arreſt all ſuch perſons as in your preſence ſhall ride or go Armed offenſively, or ſhall commit or make any Riot, Affray or other Breach of the Peace, you ſhall do your beſt endeavour upon Complaint to you made, to Apprehend all Felons, Barretors, or Riotors, or perſons riotouſly aſſembled; and if any ſuch Offenders ſhall make reſiſtance with force, you ſhall levy* Hue and Cry, *and ſhall purſue them until they be taken: You ſhall do your beſt endeavour, that the Watch in your Town be duly kept, and that Hue and Cry be daily purſued according to the Statute; and that the Statute made for puniſhing the Vagabonds, Rogues and Night-walkers, and ſuch other idle perſons coming within your Liberties, be duly*

duly put in Execution, you ſhall have a watchful eye to ſuch perſons as ſhall manage or keep any Common houſe or place, where unlawful Games are uſed, or ſuch as ſhall frequent ſuch places, contrary to the Statute: And you ſhall have a care for the maintaining of Archery; at your Aſſizes, Seſſions, or Leet, you ſhall preſent all the offences contrary to the Statutes, made and provided for the reſtraint of inordinate haunting and tippling in Inns, Taverns, and Ale-houſes, and other Victualing places for the repreſſing of Drunkenneſs, and profane Swearing; you ſhall true Preſentment make of all Bloodſhedding, Affrays, Out-cries, Reſcues, or other Offences, committed or done againſt the Kings peace within your limits, you ſhall well and duly execute all Precepts and Warrants to you directed from the Juſtices of the Peace and others, who have Authority in this County; you ſhall well and truly, according to your knowledge, power, and ability, do and execute all other things belonging to the Office of a Conſtable, ſo long as you ſhall continue in the ſaid Office.

So help you God.

Or more briefly the Oath is sometimes Administred, thus.

YOU *shall Swear, That you shall well & duely execute the Office of* Constable *(or Tything man) for the Parish (or Tything) of* S. *for this next year (or half year as the Case is) and until another be Sworn in your room, or you shall be legally discharged thereof.*

So help you God.

CHAP. III.

The Authority of Constables distinguisht, and the Power he hath by the Common Law declared.

THE Authority of Constables, is either substantive, and of it self, or substituted and adstricted to the Warrants and Commands of the Justices of Peace, or as others divide it; it is either Original given them by the Common Law, or additional, annexed by divers Statutes.

As

As for the latter ſort, *viz.* the ſubordinate power, whereby Conſtables are to execute the Commands of the Juſtices, or likewiſe the additional power given them by divers Statutes, the ſame, being very large, and of things of diverſe diſperſed natures, created by the Branches of many Statutes, we ſhall hereafter ſet forth the ſame under proper and diſtinct Titles, and in this Chapter ſhall only handle the original and ſubſtantive power of a Conſtable, which may be reduced to three heads,

1. For matter of Peace only.
2. For matter of Peace, and of the Crown.
3. For matter of Nuſance, Diſturbance, and Diſorder, although they be not accompanied with violence, and breach of Peace.

1. Conſtables (under which name I here underſtand Borſholders, Tithing-men, Head-boroughs, *&c.* for what is ſaid of the ones Office, may in this reſpect be regularly ſaid of the reſt) within their ſeveral and reſpective Towns, Liberties, and Precincts are *Conſervators of the Peace*

(1.)Bro. f. 127. Tit. Affray. Dal. Juſt Peace. Ca. 3.

(1.) *virtute Officii* by the very nature of their Office: Now in Law, this is ſaid to be *Breach of the Peace*, when any perſon uſes injurious force or violence againſt the perſon of another, his Goods, Lands, or other Poſſeſſions, either by menacing words or threats, furious geſtures, force of the body, or any other unjuſt force uſed to terrifie him, whom it is directed to: And therefore the Conſervation of the Peace conſiſts likewiſe in three things.

1. In preventing and foreſeeing that nothing be done, that tends directly, or may probably be an occaſion or means of violating the Peace.

2. In quieting and pacifying thoſe that are actually in breach of the Peace.

3. In puniſhment, ſuch as have already broken the Peace.

Stat. northa. 2 Edw. 3. ca. 3.

A Conſtable, for preventing that nothing be done againſt the Peace, ought to ſtop all ſuch perſons, as go or ride unlawfully arm'd, and to take ſuch their Armour from them, and commit them to the Jayl.

He may take or arreſt ſuſpected perſons, which walk in the night, and

flee

sleep in the day, or which do haunt any House, where there is suspicion of bawdry, and carry them before a Justice of the Peace to find Sureties for their good behaviour; for though the Constable may do what he can to secure the Peace, yet he cannot of himself take Surety of the Peace of any man: for it must be either by Recognisance, or obligation: And how can he take a Recognisance, who is no Officer of Record; and if he take Surety by Bond, the question is, how it shall be certified, and into what Court? Some are of opinion, he may do it by Bond Sealed to the use of the King, and transmitted into the Exchequer or Chancery, whence Process should be awarded to levy the Debt, if the Peace were broken: But my Lord *Anderson* declared, that the Constable ought not to meddle therewith, but only to apprehend the Offenders, and carry them before a Justice to find Sureties for the Peace there, which at this day is the most general and safest course.

Crompt. 6. 12 H. 7. f. 18. a.

Skarrets Case trin. 35. Eliz. in B. C.

For pacifying Quarrels begun, the Constables may upon hot words given, or violent likelihood of breach of the Peace to ensue, command them in the

Kings name to keep the Peace, forbear and depart: And if any ſhall actually make an Affray in the preſence of the *Conſtable*, *Headborough*, &c. or threaten to kill or beat another, or ſhall be in a fury ready to break the Peace, ſuch Officers in any of theſe Caſes may commit the Offenders to the Stocks, or ſome other ſafe Cuſtody for the preſent (according to their Quality) until
3. H. 4. 9. 10. ſuch time as he can carry them before a Juſtice, and upon their refuſal to give Surety, may commit them to the Goal.

If a Conſtable be negligent in his Office, when he is ſent for to part an Affray, or doth not uſe his beſt endeavour to part them; this being preſented by the Inqueſt at the Seſſions of the Peace, ſuch Conſtable may be fined
Dalt. p. 33. for it: And if they have committed or cauſed any to be bound over for breach of the *peace*, they muſt attend the Goal-delivery or Seſſions of the Peace, to declare the offences, for which they were
Crompt. 146. ſo bound over or committed.

Dalt. Ca. 8. A Conſtable going to Arreſt any that has made an Affray, may juſtifie his breaking open the doors; and if he flie, may in freſh purſuit follow him, not only out of his own Liberty, but even

even into another County; and if he overtake him in his own County, has ſtill in this caſe only as much Authority to arreſt and carry him before a Juſtice, as if he had taken him in his own Precincts: But if he be got into another County, the Conſtable can purſue there, but as a private man, and muſt get a Conſtable of that County, to aſſiſt him, & carry him before a Juſtice there, and commit him (if the Caſe require it) to the Goal of the County, where he ſhall be found.

Note, it is properly no Affray, unleſs ſome Weapons are drawn, or ſome ſtroks ſtruck, or threatned to be given, or ſome attempts to that purpoſe, by menacing geſtures, or the like. And therefore meerly for opprobrious or hot words, the Conſtable may not lay hands on them, unleſs they threaten to kill, hurt, or beat one another, and then he may ſeize them to find Sureties to keep the Peace; and where two perſons be a fighting, though no hurt done, he may apprehend them to find ſuch Sureties; but if any perſon be dangerouſly wounded, the Conſtable ought to Arreſt thoſe engaged in that Affray, & carry them to a Juſtice, who

Bro. Faux Impr. 6.

Dalt Ca. 8. Kitchin. fol. 68.

is either to Bail them till the next Jayl-delivery, or commit them, till it be known how it will fare with the party: for in case he dies within a year and a day, the Fact is Felony.

For punishment of breach of peace past, the Law is very sparing in giving any Authority to Constables, because they have no power Judicial, but Ministerial, and the use of his Office is rather for preventing or staying of mischiefs, than for punishing of Offences; for in that part he is rather to execute the Warrants of the Justices; or when suddain matter ariseth upon his view, or notorious circumstances, to apprehend Offenders, and carry them before the Justices, and only to Imprison in cases of necessity, where the Case by reason circumstances (as Night, danger of Rescue, or the like, will not allow the present carrying before the Justice: And therefore note, that after an Affray is over, the Constable coming without a Warrant, cannot Arrest the Affrayers, except some person amongst them be in peril of death, by hurt there received; yet before the Fray begun, and during the time thereof, he may Arrest them without Warrant.

38. H. 8. Bro. Faux Impr. 6.

The

The Second part of the Conſtables Subſtantive Office, or things he may do by his own Power, relates (as we told you) *to matters of the Crown, and conſiſts chiefly in Four parts.*

1. Arreſt. 2. Search. 3. Huy and Cry, and the 4th. Seizure of Goods.

All which a Conſtable may perform by vertue of his Office, without any Warrant from the Juſtices.

1. For firſt, If any Man will lay murther or felony to anothers charge, or do ſuſpect him of Murther or Felony, he may declare it to the Conſtable, & the Conſtable ought upon ſuch declaration or complaint, to carry him before a Juſtice, and if by common voice or fame any man be ſuſpected, the Conſtable of duty ought to Arreſt him, and bring him before a Juſtice to be examined, though there be no other Accuſation.

2. If any Houſe be ſuſpected for re-

ceiving or harbouring of any Felon, the Constable upon complaint or common fame, may Search.

3. If any flie upon a Felony committed, the Constable ought to raise Huy and Cry to take him, and in the mean time to seize his Goods, and to Inventory them in the presence of honest Neighbours.

The last Branch of this part of a Constables Office, as we said, refers to Nusances and Disorders, though not accompanied with violence, and breach of the Peace. Which matters of Common Nusance and grievance, are of a very variable Nature, according to the several Comforts which Mans Life and Society requireth, and the Contraries which infest the same.

Nusances, Bacons Cases, p. 28.

In all which, be it matter of corrupting Air, Water, or Victuals, or stopping, straightning, or endangering Passage, or general deceits in Weights, Measures, Sizes, or Counterfeiting Wares,

Wares, and things vendible: The Office of the Conſtable, is to give (as much as in him lies) information of them, and of the Offenders in Leets, that they may be puniſhed: But becauſe Leets are kept but twice a year, and many of theſe things require preſent or ſpeedy remedy, the Conſtables in things of notorious and vulgar nature, ought to forbid and repreſs them in the mean time.

General Obſervations moſt neceſſary to be known concerning Conſtables, Tything-men, Head-boroughs, &c.

1. All the Caſes herein before or afterwards declared, touching the Office and Duty of theſe Officers, muſt be ſo underſtood as to Authorize and charge them within their own Limits, and Precincts only, for which they were choſen, and no further: For although they are bound to look to the Peace, ſuppreſs Felons, Execute Juſtices Warrants, and the like, yet all this is meant within their own Hundreds, Pariſhes, and Tythings only, within which

The Precinct of the Conſtables Office.

which alone they have Authority and power, unleſs in the ſpecial Caſe of purſuing an offender that flies from them out of their own Liberties, carrying a Malefactor to the next Juſtice, or to the Jayl, or the like; for otherwiſe, out of their own Precincts they have no more Authority than a private man, nor are they there bound to do any of the things appertaining to their Office, any more than any other man is.

Refuſal to Aid him. Broo. Treſp. 431. dalt. 303.

2. Theſe Officers generally in the execution of their Office, when need is, or any reſiſtance or danger is apprehended, may charge ſo many of their Neighbours, or others of all ſorts of able men, as he ſhall think meet, to Aid and Aſſiſt them; and if any perſon ſhall refuſe or neglect ſo to do, he may be Fined and Impriſoned for it at the Quarter Seſſions.

Breaking open Doors. dalt. 176 Coo. 5. 92. 13. Edw. 2. 9

3. Though every mans Houſe be eſteemed his Caſtle, and great reſpect be given it by the Law, yet theſe Officers, if they cannot otherwiſe get in, may juſtifie the breaking open a mans Houſe in theſe Caſes following: To ſearch after, or Arreſt any perſon for Treaſon, Murder, Felony, or ſuſpicion of the ſaid Crimes, that is, or is pro-

probably thought to be in the Houſe: To take a man that hath dangerouſly wounded another, and is fled into the Houſe, to appeaſe a Fray that is in the Houſe, eſpecially if there be any cry of Murder, to apprehend a Popiſh Recuſant upon a Warrant to break open the Houſe, upon a Warrant to take a Conventicle where they ſhall be informed one is held within, to ſeize the perſons met, by the Stat. 22. *Car.* 2. *Car.* 1. But to levy the Fines Aſſeſſed on perſons preſent at Conventicles, they cannot juſtifie breaking open doors, ſeveral both at *Kent* and *Eſſex* Aſſizes having been ſued thereupon; likewiſe in the day time, they may force into any Houſe upon a Warrant to ſearch for uncuſtomed Goods by the Stat. 12. *Car.* 2. *Ca.* 19. and 14. *Car.* 2. *Ca.* 11. And generally in Caſes where the Kings Majeſty is immediately concerned, or has any intereſt. But in all theſe Caſes, the Officer before he does break open the Houſe, muſt ſignifie the cauſe of his coming, and require the door to be open'd.

Reſiſting conſtables.

4. 'Tis very dangerous to oppoſe or hinder theſe Officers in the performance and execution of their Office.

For.

Coo. 4. 40. 9. 9. Broo. Tresp. 296. Dalt. 297.

For to kill one of them is wilful Murder, certainly punishable with death, though he that did it, had no real intent nor design to kill him, yet the Law construes it Murther, because against a minister of Justice; to beat or wound any such Officer in the doing of his Office, is a great Trespass, not to be recompensed without considerable damages; and even otherwise to abuse him in doing of his Office, as aforesaid, with reviling Language, is a misdemeanor that may cause the Offender to be bound to his Good behaviour.

As the Law thus protects her Officers, so it no less disfavours those that shall oppose them. And therfore if the party that is to be Arrested, shall make resistance, assault the Officer, or any of his Assistants, or labour to make an Escape, the Officer may justify the beating, yea, the wounding him also; & if it be upon a Warrant, to Arrest one Indicted of Felony, he may justify the killing him, if he cannot otherwise take him, or if being taken, he resist or fly.

Judges Opinion. 5. Car. 7. Jac. Ca. 5. 21. Jac. Ca. 12.

And for their further indempnity in the lawful execution of their offices, it

is

is provided by ſpecial Statutes, That if any Action, Bill, or Suit, as Treſpaſs, falſe Impriſonment, or the like, ſhall be commenc'd or brought againſt any Conſtable, Tything-men, Church-wardens, Overſeers for the Poor, and other Officers there particularly named, or any of their Aſſiſtants, for, or concerning any matter or cauſe, by them or any of them done, by virtue of their, or any of their Offices, or by any perſons in their Aid and Aſſiſtance, or by their commandment.

1. That every ſuch Action or Suit ſhall be brought and laid within the County, where the Treſpaſs or Fact ſhall be done and committed, and not elſewhere.

2. That all ſuch Officers and their Aſſiſtants may plead the general Iſſue, *Not guilty*, to all ſuch Actions, and give the ſpecial matter in evidence.

3. That in all ſuch Caſes where the Verdict paſſed for the Defendant, or the Plantiff is *Non-ſuit*, or diſcontinues his Suit, theſe Officers ſhall be allow'd double Coſts to be recovered, as other Defendants, to recover their uſual Coſts.

CHAP.

CHAP. IV.

How Conſtables are to diſcharge their Duty in Relation to Warrants ſent to them from Juſtices of Peace.

HItherto we have ſpoken of the Conſtables Office, as 'tis Subſtantive, and of it ſelf, we come now to conſider it as the ſame is ſubſtituted, and adſtricted to the precepts of the Juſtices; for which,

Dalt. 291. 1. Note, That theſe Officers muſt with all reſpect, receive the Warrants of the Juſtice of Peace. For if a Warrant be directed and brought to one of theſe Officers, and he ſhall ſhew any neglect or contempt of it, as by flinging it into the dirt, *&c.* or do not with all care, ſecreſie, and diligence, execute the ſame, theſe are Miſdemeanors, for which he may be either bound to the Good-behaviour, or be Indicted and Fined: And by a ſpecial Statute (*i*) there is a great charge laid upon the Officers within the ſeveral Counties of

(*i*) 27. H. 8. Ca. 5.

Wales,

Wales, That they be careful to execute the Warrants of Justices of the Peace there.

2. The Officer must well consider what he goes about; for though it be true that he is not obliged to question, nor may he dispute the Authority of the Justice, or legality of his Warrant in things belonging to his Office. For if the Justice mistake and go beyond his Authority in the manner of proceeding, in a Case wherein, for the matter, he hath Cognizance: As if he send a Warrant to him, to Arrest any man for the Peace or good Behaviour without any Cause, or to take a man for a Felony when none is done: In these and the like cases the Officer is bound to execute it, and shall be excused therein. But if the matter, about which the Warrant is, be such as is out of the jurisdiction of the Justice of Peace, I mean, wherein he is no Judge. As if he send his Warrant to the Constable to levy of the goods of *T. L.* ten pounds debt, which he doth owe to him, or to any person; and all this appears by the Warrant it self. In this and such like Cases it is agreed, that the Officer may refuse to execute it,

How far bound to obey Warrants.

it, & may not without danger obey it.

And here we must distinguish between things apparent, & things concealed, between smaller & more great and notorious mistakes: As if a Justice send a Warrant to levy of a man ten pounds becaus he hath sworn an *Oath*, or to sel the one half of the goods of a man convict before him, for swearing four Oaths, when perhaps the Goods are worth an Hundred pounds; or send a verbal warrant only to one that is absent (for if he be in his presence, 'tis good) or send a warrant to the Constable, requiring him to do something out of his Precincts: In these and the like grose Cases the Constable is not bound to obey, nor shall he be excused if he do it. But if the Justice, where he hath power to send a man to Prison after ten days, for such an offence or default, grant a Warrant to send him to Prison before the ten days are out; or, if when by some Acts of Parliament, he is directed to send a Warrant under his Hand and Seal, he send it only under his Hand; or where he is to direct it to the Constable and Church-wardens, he send it to the Constable or Church-wardens, *&c.*

In some Cases.

In

In such petty mistakes, it seems reasonable, the officer should notwithstanding execute it, and be excused therein: Wherefore my Advice to Officers, is, to consider well of the Warrant, and if they find the thing required to be done, be nothing but what is ordinary, and hath been used to be done by such Officers; then to do it. But if it be to do any thing unusual, new, and extraordinary, That then, without any contempt and stubbornness, they endeavour to be well advised before they do it; tho at this day the Commissions for the Peace, in each County, are fill'd with such discreet, judicious, & intelligent Gentlemen, that we conceive such a Warrant absolutely defective, or dangerous, for the Officer to execute, will rarely, if ever happen: However, for these things, See *Coo.* 10. 76. 6. 54. 14. *H.* 8. 16. *Broo. Faux Imprisonment.* 8.

3. If any Officer Arrest any man under pretence of a warrant, he ought to have his warrant first, and directed against the right person. For if he Arrest first, and bring the man to the Justice, and then get a Warrant to do it, such Arrest is false Imprisonment; and

and the ſubſequent Warrant, though Antedated, ſhall not make it lawful; likewiſe if a Warrant be intended againſt *J. K.* (who is the Delinquent) but be ſent againſt *H. C.* another man, in this Caſe the Officer cannot Arreſt *I. K.* by an averment of the intendment, but muſt Arreſt *I. D.* For he is bound to follow the expreſs words of his Warrant, and not to exceed it, for that may be dangerous: yet this is to be underſtood, *cum grano Salis* with diſcretion, *viz.* That when any thing is commanded, all that doth neceſſarily conduce to the performance thereof, & without which it cannot be done, is commanded alſo. And therefore ſo much may be done, although not expreſly ſet down in the Warrant.

Verbal warrant.

4. A Warrant from a Juſtice of Peace by word of mouth, is as good in ſome Caſes as a Warrant in writing, As if a *Riot*, or other breach of the Peace happen in his preſence, he may by word of mouth command the Officers or any others, to Arreſt the Offenders to find Sureties for the Good-behaviour in the firſt, or for the Peace in the laſt caſe; and if they refuſe to put in ſuch Sureties, he may likewiſe by word

word of mouth, command to convey them to the Jayl; But in other caſes his Verbal Order to an Officer for Offences committed out of his preſence, is no ſufficient Warrant. And if he ſend an Order by meſſage only, to an Officer to Arreſt a man, and carry him to Jayl, the Conſtable may lawfully refuſe it.

5. A Conſtable or other publick ſworn Officer (though he be not known to the Party Arreſted) needs not to ſhew his Warrant to the Party, when he comes to ſerve it upon him, although he demand it. But otherwiſe it is, when one that is no Officer, ſhall Arreſt a man on a Juſtices Warrant; for he muſt ſhew his Warrant. And the ſworn or known Officer alſo, muſt upon the Arreſt, declare the contents of the Warrant to him. And note, that a Conſtable, or the like Officer gives ſufficient notice what he is, when he ſaith to the Party——*I Arreſt you in the King's Name* (for thoſe words are an Arreſt in Law, although he never lay hands on him) and the Party ſo Arreſted muſt at his Peril obey, though he know him not to be an Officer; for if he have no lawful Warrant,

Shewing the warrant. Coo. 9. 69 Dalt. 28.

rant, he has his remedy by Action of
Escapes. false imprisonment against him. These Officers having apprehended any person, ought to be very vigilant to keep him safe, & prevent Escapes, especially if the Arrest be for matter of Felony; for there an Escape suffer'd voluntarily, is Felony in the Officer; and whatever the cause of the Arrest be: & be the Escape suffer'd either voluntarily, or involuntarily, & by negligence, if the Officer do not take the Prisoner again by a fresh pursuit after him, he shall be Fin'd for it according to his Offence, at the discretion of those that shall be Judges of the Cause, who (I must tell you, lest any man should flatter himself with hopes of coming off at an easy rate) have power to set his Fine to the value of all his Goods, if they think fit; nor is this hard or unreasonable, since these Officers going about their duty may command and take what Assistance and help they please. And note, that if an Officer take a man upon a Warrant, and lets him go, taking his word that he shall come to him such a day, to go before the Justice, and the party come not; this is an Escape in the Officer,

for

for which he may be puniſhed; nay, it ſeems the Officer cannot now Arreſt him upon his former Warrant, but muſt procure a new one. But if the party do make an Eſcape of his own wrong, without conſent of the Officer, there the Officer on the ſame warrant, on a freſh purſuit may take him again, although he were got out of his ſight, or even out of his Liberty, as before was ſhewed in the former Chapter.

7. Although theſe Officers (as by what we have ſaid appears) have power in diverſe Caſes to Impriſon or carry to the Goal; yet when the party by them committed, is actually in a Goal or Priſon, they have not power in any Caſe to ſet him at liberty again, without carrying him before a Juſtice, or other due Proceſs of Law; yet is not this ſo rigidly to be underſtood as the City-Conſtables generally conceit, who hold, that if a perſon be taken in the Night on their Watch, who poſſibly gives diſobliging Language, and thereupon the Conſtable ſays to ſome of his Watch-men——*Carry him to the Counter.* Now they maintain, that after theſe words pronounced, the Conſtables on the parties ſubmiſſion,

or

or proof of his being a civil person, or other inducement whatsoever, cannot call him back or discharge him, though he be not yet actually in the *Counter*, which seems a very vain and groundless opinion. For if an Officer in Case of an Affray, shall only put the Affrayors apart into the Stocks, or into some House or room, until the heat be over; 'tis agreed in this Case, the Officer may of his own head set them at liberty again, *Ergo a fortiori* in the other Case.

8. There is a like mistake, that a person on a General Warrant, may chuse what Justice he will go before, which is not only against Law, but sense, that the Election should lie in the power of the Delinquent; or that the Officer should be obliged to wait on him at his pleasure; but he may carry him to what Justice he himself thinks fit; yet if the Warrant run only *To bring him before me* (without adding, or any other of his Majesties Justices) then the Constable must carry him to the same Justice that granted the Warrant, and not elsewhere.

Lastly,

Laſtly, Note, that every perſon committed to Jayl, ought to bear his own Charges to be levied (‖) of his Goods and Chattels, on a Warrant to that purpoſe to be granted by the Juſtice; but if he have not Goods, then the charge of conveying him is to be born by the Pariſh where he is Apprehended, by an indifferent Aſſeſſment made by the Conſtable and Churchwardens, and two or more of the Inhabitants, and allowed of by a Juſtice of Peace: And as for the Jaylor, he is bound to receive the Priſoner freely, without taking any thing of the Officer that brings him.

(‖) St. 3. Jac. Ca. 10.

CHAP. V.

The Conſtables Duty by ſeveral Statutes, as concerning profane Swearing, profaning the Sabbath, Drunkenneſs, diſturbing Miniſters, Recuſants, Quakers, and Conventicles.

WE now proceed to particularize the Conſtables Office & Duty, as required and enjoyned by ſeveral Statutes, having been the larger in the two fore-going Chapters, as well for that we conceive thoſe things to be abſolutely neceſſary to be known by all that would underſtandingly diſcharge their Office, as alſo becauſe that ſome who lately have obtruded directions for Conſtables on the World, have either wholly omitted, or very lamely and imperfectly delivered the ſame.

A Jove principium----

We

We shall begin this Chapter with matters appertaining to Religion. All persons that profanely Swear or Curse, for every such Offence, forfeit 12.*d.* to the use of the Poor of the Parish, where the same is committed; the offence to be proved within twenty days, by two Witnesses, or confession of the Party before a Justice, or chief Magistrate of any Town Corporate, who upon such Conviction are to issue out their Warrant to the Constable, Church-wardens, and Overseers, to levy the Forfeitures by distress and sale of the Offenders Goods, restoring to him the *Overplus:* But if the Offender have no Goods that can be found, the Offender (if above 12 years of Age) shall by the said Officers by Warrant, as aforesaid, be set in the Stocks three whole hours; and if under 12 years old, and do not forthwith pay the forfeiture, then he or she must be whip'd by the Constable, or by the Parent or Master, in the presence of the Constable. If this were well observed, we should not have our Streets eccho thus with Oaths and horrid Execrations.

Profane Swearing

If any person go out of their own Parishes on the Lords day, for any

Profaning the Sabbath.

Sports or Paſtimes, as *Bull-baiting*, *Bear-baiting*, *Interludes*, (or *Stage-plays*) each perſon forfeits 3 *s.* 4 *d.* to the uſe of the Poor of that Pariſh where the offence is committed, it being a ſufficient Conviction, if done in the preſence of a Juſtice, or proved by the Oath of one Witneſs or more, or Confeſſion of the Party, upon which the Juſtice or chief Magiſtrate of a Corporation is to direct his Warrant, under his Hand and Seal, to the Conſtables or Church-wardens, to levy the penalty by diſtreſs and ſale of the Offenders Goods, returning the *over-plus*; in default of diſtreſs found, to ſet them in the Stocks three hours; but note, the Offender muſt be proſecuted within one Month. *Stat.* 1 *Car.* 1.

By Sports. Every perſon keeping, or being preſent at any Wreſtlings, Shootings, Bowlings, Ringing of Bells for pleaſure, Mask, Wake, Church-Ale, Dancing, Games, Sports, or Paſtimes, forfeits 5 *s.* if above fourteen years of Age; or if under, 12 *d.* by them, under whoſe Tuition He or She is; to be Levied on a Warrant by the Conſtable as aforeſaid, or for want of diſtreſs, to be ſet three hours in the Stocks, 3 *Car.* 1.

The

The same Statute punisheth all Carriers, Waggoners, Carters, Wain-men, or Drovers Travelling on the Lords day, with the forfeiture of 20 *s.* And all Butchers that kill or sell any Victuals on that day, forfeits 6 *s.* 8 *d.* Which sums after Conviction, may by Warrant be levied by the Constable or Church-wardens, to the use of the Poor, where the offence is committed, by distress and sale of goods, rendring the over-plus; the Conviction shall be by view of the Justice or chief Officer confession of the party, or Oath of two or more Witnesses: And for encouragement, the Justice, Mayor, *&c.* may reward the Informer with a third part of the penalty, laid on the Butcher, but all these offences must be prosecuted within six Months. And as to Carriers, *&c.* there shall be but one 20 *s.* forfeited for one Journey, though they pass through several Parishes; which 20 *s.* that Parish shall have where the distress is first taken. 3. *Car.* 1. *Ca.* 1 *Dalt. fo.* 134.

By Carters, Drovers or Butchers.

Drunkenness.

The Constable or other Inferiour Officer in every Parish, shall present at the Assizes, Sessions, and Court Leets, all common Tipplers and Drunkards;

St. 4. Jac. Ca. 5. 21. Jac. Ca. 7. Dalt. Chap. 7.

and if they neglect to serve the Justices Warrant of distress or punishment against Townsmen, or other continuing Tipling in any Inn, Ale-house or Victualing house, contrary to the Statute, or against persons for being drunk; that is to say, three shillings and four pence for Tipling, & five shillings for being drunk, to the use of the Poor, to be levied on the Offenders Goods, and sale thereof after six days default of payment, restoring the overplus: And in case no distress can be found, to set the Tipler in the Stocks for four hours, & the Drunkard for six hours, the Conviction being by the view of any Mayor or head Officer of a Corporation, or Justice of Peace within their respective Limits, or by the Oaths of two Witnesses (but by the *Stat. 2. Jac.* 5. the Magistrates view, his own Confession, or one Witness is sufficient to convict him) I say, if in this case the Constable neglect his duty, he himself forfeits ten shillings to the use of the Poor, to be levied upon his Goods by distress and sale as aforesaid: But note that those offences must be prosecuted and inquired of, within six months after they were committed:

But

But those that are convicted a second time, shall be bound with two Sureties to be of the good behaviour; and the Oath of any one that confesseth the offence, shall be a good conviction against any offending with him at the same time.

Disturbing of Ministers.

Any person disturbing a lawful Minister in Preaching, Praying, or administring the Sacrament, shall presently be apprehended by the Constable or Church-wardens, and carried before a Justice, who may, if he please, commit him to safe custody, and within six days may with another Justice, if they find the offence proved by two Witnesses, commit him to the Jayl for three months, and from thence till the next Sessions, where giving Security for the good behaviour, he may be discharged; otherwise to continue in Prison till he do submit. He that rescues such an offender, shall suffer Imprisonment, and also forfeit 5 *l.* which sum the Inhabitants likewise forfeit, if they suffer him to escape, St. 1. *Mar. Sess.* 3. *Ca.* 3. Yet quere whether this Statute be in force, for some think it repealed by the 1 *Eliz. Ca.* 2. See *Dalt. Ca.* 41. p. 103.

Recusants St. 35 Eliz. Ca. 2. Recusants above sixteen years of age convicted, shall repair to their usual dwelling, or where their Father or Mother dwells, and not remove above five miles from thence, on pain of forfeiting all their Goods, and their Lands and Annuities for life, and therefore they are to give their names in writing to the Minister and Constables, who are to enter them in a book, and transmit them to the Sessions, there to be Inrolled.

St. 3. Jac. Ca. 4. The Constables and Church-wardens ought once every year, at the Quarter Sessions, to present all Popish Recusants, with their Servants and Children above nine years old, that come not to the Church monthly, on pain of forfeiting 20 *s.* Which presentment the Clerk of the Peace, or Town Clerk is to Record without fee, or he forfeits 40 *s.* And for every such Recusant Indicted and Convicted, not before conviction) the Constables, *&c.* that presented him, shall have 40 *s.* out of his Goods.

St. 7. Jac. C. 6. If the Minister, petty Constable, or Church-wardens, of any Parish, or any two of them, shall complain to a Justice of the Peace, of any person suspected of

of Recusancy, such Justice may tender the Oath of Supremacy to the person suspected; and if he refuse to take it, commit him to Jayl till the next Assizes or Sessions; where if he again refuse, he incurrs a premunire; but in case it be a Feme Covert, she shall only be continued in prison without Bail till she take it.

Quakers that shall maintain an Oath in all Cases unlawful, or refuse to take an Oath lawfully tendred, or meeting under pretence of Religion, to the number of five or more, being convicted by Verdict, confession or notoriousness of the Fact; for the first offence forfeit any sum that the Judges please, under 5*l.* to be levied by distress; or for want thereof, and upon non-payment in a week, to stand committed three months without Bail, to the Jayl or House of Correction. For the second offence 10*l.* or six months Imprisonment, as aforesaid. The third offence is Transportation. And in all these things Constables are to be subservient in the execution of the Justices Warrants to them directed, as well for distraining and selling the Estate of such as are to be Transported, *Quakers* St. Ca. 2. Car.

as for levying the first and second forfeiturer. For if they neglect their duty herein, they forfeit 5 *l.* for every offence, *St.* 16. *Car.* 2. *Ca.* 4.

Conventicle. St. 22. Car. 2. Ca.

If any Constable, Head-borough, Tything-man, Church-warden, or Overseer of the Poor, shall know or be credibly informed of any Conventicle (that is, any meeting of five Persons, or more, above the Family, under colour of Religion, in other manner than according to the Liturgy of the Church of *England*) within his Precincts, and shall not inform some Justice or chief Magistrate, but neglect his duty in execution of this Statute, he forfeits 5 *l.* And a Justice or chief Magistrate, if he neglect, shall forfeit an 100 *l.* One half to the Informer.

By the same Statute, Constables, Headboroughs, Tything-men, Church-wardens, and Overseers of the Poor, are Authorized and Required, having first received a Warrant under the Hands and Seals of one or more Justices or chief Magistrate, to levy the fines and forfeitures Assessed on those who shall be present at such Conventicles, which are as follows.

The

The firſt offence to be Recorded, and a Fine of 5 *s.* impoſed. The ſecond offence a Fine of 10 *s.* Both theſe Fines to be levied by diſtreſs on the Offenders goods; or in caſe of his Poverty, on the goods of any other Perſon, convicted for being preſent at the ſame Conventicle, at the Juſtices diſcretion. Every Preacher convicted, forfeits 20 *l.* for the firſt, and 40 *l.* for the ſecond offence; if unknown or thought unable to pay, to be levied on any perſons preſent.

And every one that ſuffers ſuch Conventicle in his or her Houſe, Outhouſe, Barn, Yard, or Backſide, forfeits 20 *l.* In caſe of their Poverty, to be levied on any other preſent, provided that no one perſon ſhall pay above 10 *l.* for any one meeting, in regard of the Poverty of others.

All ſuch monies levied, the Conſtables, *&c.* are to deliver to the Juſtices, *&c.* to be divided, one third part to the King, another to the Poor of the Pariſh, where the offence was committed, and the other third to the Informers, *&c.*

It is there alſo Enacted, That by a Warrant from one or more Juſtices, or the

the chief Magiſtrate of a Corporation, the Conſtables, Headboroughs, and Tything-men (Overſeers are not named) may, with their aſſiſtance, after refuſal or denial to enter, break open any Houſe where they ſhall be informed a Conventicle is, and ſecure the perſons. *But no ſuch power is given, when they go to levy the Diſtreſſes or Forfeitures.*

Note, A Feme Covert offending and Cohabiting with her Husband, the penalties of 5 *s.* and 10 *s.* ſhall be levied on the goods of the Husband.

CHAP. VI.

The Conſtables Office, Concerning Watching and Warding, Hue and Cries, Riots, Forcible Entries; Arms, Chimney-money, Cuſtoms and Exciſe.

Watch & Ward. St. 13. Ed. 1. Ca. 4.

ALL Conſtables within their Precincts, are to keep a Night-watch from *Aſcenſion* day (commonly called *Holy Thurſday*) till *Michaelmas* from Sun-ſetting to Sun-riſing, by two or

or four men, according to the largeneſs of the Precinct.

Concerning which, theſe things are to be noted.

1. That none but Inhabitants of the ſame Town or Precinct are compellable to Watch and Ward. *Kitchin* 47, 48, 49. Dal. J. P. Ca. 60.

2. They muſt be men of diſcretion, able bodies, and ſufficiently armed.

3. The ſaid Inhabitants are bound to Watch, only by their reſpective turns, or by the Houſe according to the cuſtom of the place, and not unequally at the Arbitrary pleaſure of the Conſtable. For though the Conſtable *ex officio*, is to order it, and may enlarge it upon occaſion, yea he cannot change the courſe of it, ſo as to make ſome Watch, and excuſe others.

4. If any perſon ſo compellable to Watch, ſhall refuſe ſo to do, or neglect his duty therein, the Conſtable may preſent ſuch a perſon at the Aſſizes or Seſſions, or complain of it to a Juſtice, who may bind the Offender to the good Behaviour. And ſome hold that the Conſtable in ſuch a caſe, may of his own Authority ſet ſuch refuſers in the Stocks.

5. That

5. That in default of this Watch, the Townſhip may be Fined, and therefore the Conſtable is to ſee it be done in an orderly way, and complain and get it rectified if it be neglected.

6. Theſe Watchmen are to examin all Strangers that paſs by them in the Night, and if they find them ſuſpicious may Arreſt and detain them till Morning; and if they refuſe to obey, may levy Hue and Cry to take them, and if they reſiſt, may juſtifie beating of them, or ſet them in the Stocks or Cage till Morning; and then if no ſuſpicion be found in them, they may diſcharge them; but if there be grounds to ſuſpect them, then they muſt deliver them into the hands of the Conſtable, to have them before a Juſtice, that he may upon Examination, commit, bind over, or acquit them as he ſhall ſee cauſe. Furthermore, theſe Watchmen are to Apprehend Rogues, Vagabonds, Eveſdroppers, and all ſuch as ſhall go or ride unlawfully Armed, *&c.* See the Stat. of *Wincheſter* and *Lamb. Office* of *Conſt. p.* 12.

Hue and Cry, dalt. Ca. 28.

Every Conſtable is to levy Hue and Cry where there is cauſe, and ſend it Eaſt, Weſt, North, and South, wherein

'tis

'tis best to express the nature of the things Stoln, and to describe the Felons; and when such Hue and Cry comes to an Officer, he must with all speed make diligent pursuit both by Horse and Foot, after the Offender from Town to Town, the way it is sent, and to make diligent search in all suspicious places within his own precincts. For otherwise both the Constable and the Hundred may suffer for the neglect, and the Hundred where fresh pursuit ceaseth shall answer half the damages to the Hundred where the Felony was committed.

27 Eliz. Ca. 13.

Peace & Supersedeas, Dal. Ca. 69. Lambard *Office of Const. p.* 21.

Though we have before declared the Constables duty, in relation to preserving the peace, yet here it properly falls in to advise, that a Constable having a Warrant from a Justice of Peace to Arrest a person, to find Sureties for the Peace, if afterwards he receive a *Supersedeas*, either out of Chancery *&c.* or from any other Justice of the same County, to discharge the putting in such Sureties; he ought to desist from urging the party further to put in Sureties, for he may then lawfully refuse to do it; and if the Constable Arrest him for such refusal, 'tis false Impri-

prisonment. But in such case 'tis good the Officer do keep the *Supersedeas* for his better discharge, if he shall be called to an account for not serving the Warrant directed to him.

Riot. St. 27. R. 2. Ca. 8. All Sheriffs, Constables, and other the Kings Officers, shall suppress Riots, and Imprison the Rioters, and all other Offenders against the Peace. Now for the better understanding of this, you must note, that when three or more persons assemble themselves to do any unlawful act with force, against the person of another, his goods or possessions, as to Kill, Beat, or Imprison him, to pull down a House, Wall, Pale, Hedge or Ditch, wrongfully, to enter upon, or into another mans Possessions, House or Lands, or to cut or take away his Corn, Grass, or Woods, or unjustly to hunt in any Park or Warren, *&c.*

Unlawful Assembly. If they only meet to such a purpose or intent, though they afterwards depart of their own accord, without attempting any thing, this is an unlawful Assembly: If after such meeting they shall ride, go, or move forwards towards the execution of such their intention, whether they put it in execution or not, this is a Rout; and if they

A Rout. A Riot.

do

do any such unlawful act indeed, then 'tis a Riot, *Bro. Titl. Riot.* 4. 5. *Cok.* 3. part *Instit.* fo. 176.

If a Constable or any private person of the same County, in case of a forcible entry, refuse to aid and assist the Justices upon their request to remove the force, or convey the parties to Jayl, he may be to Imprisoned and fined for his neglect. *Forcible entry.* 15. Rich. 2. Ca. 8.

If any person shall ride or go Armed offensively before the Kings Justices, *&c.* or in Fairs or Markets, or elsewhere by night, or by day, to the affrightment of his Majesties People, the Constable upon sight thereof, may take away their Weapons, & cause them to be apprized as forfeited to the King, and carry the parties before a Justice to find Sureties for the Peace. But by the same Statute 'tis provided that the Kings Servants in his presence, Sheriffs and their Officers, and other the Kings Ministers, and such as are pursuing Hue and Cry, may bear Arms or Weapons. *Arms.* St. 2. Ed. 3. Ca. 3.

All High and Petty Constables, and other Officers with in their several Parishes, are to be aiding to such persons as by Warrant from the Lords Lieutenants, 14 Car. 2. Ca. 3.

tenants, or any two of their Deputies, under their Hands and Seals, to ſearch for, and ſeize Arms in the poſſeſſion of perſons judged dangerous, and to ſecure the ſame, and to give an account thereof to ſuch Officers: But this ſearch is to be made only in the day-time, between Sun riſe and Sun-ſet, and not otherwiſe, unleſs in Towns Corporate, Market-Towns, or Houſes near *London*, within the Bills of Mortality, for there ſearch may be in the night, if the Warrant ſo requires. In Caſe of Reſiſtance, they may enter with force: but ſuch Arms ſo ſeized, afterwards, if the Lieutenants, or any two of their Deputies think fit, may be reſtored to the Owners.

Ibid. *and* Stat. 15. Car. 2. Ca. 4.

Conſtables by Warrant under the Hands and Seals of the Lord Lieutenant, or any three or more of the Deputy Lieutenants, muſt levy all ſuch money, forfeitures, and payments charged on any perſon within their Liberties, for furniſhing of Arms, Horſe, or Foot, or payment of Souldiers; and where ſufficient diſtreſs cannot be found, the Conſtable by like Warrant from the Lieutenancy, may commit the Offender to Priſon, till he pay.

Though

Though the Duty of high and petty Constables about Chimney money, as it was first appointed by the Statutes of 14 *Car.* 2. *Ca.* 10. and 15. *Car.* 2. *Ca.* 13. is now much alter'd particular Officers being appointed for the Collecting thereof by the Stat. of 16. *Car.* 2. *Ca.* 3. *Chimney-money.* 16 *Car.* 2. *Ca.* 3.

Yet by the same Statute, all Justices, chief Magistrates, Treasurers, and under Treasurers, Constables, and other Officers within their several limits, are to be aiding to his Majesties Officers appointed for Collecting the duty of Hearth-money.

Such Collectors once every year, accompanied with the Constable or Tything-man, or in Parishes or places where there is none, without such assistance, may in the day-time enter any House, Edifice, Lodging or Chamber, *&c.* and examine whether there be any more Fire-hearths or Stoves, than formerly returned, and what are increased or decreased since the last Certificate; and if they find any variance, both such Collector, and the Constable or Tything man are to certifie the same under their Hands to the Clark of the Peace. *Ibid.*

if

If the Party after demand made at the premiſes where the duty grows due, by ſuch Collector, make default, or refuſe to pay by the ſpace of one hour, the Collector, with the aſſiſtance of the Conſtable, may at any time in the day levy the ſaid duty by diſtreſs and ſale, reſtoring the overplus, but with a deduction of neceſſary charges, which charges are not to exceed one half of the ſum, or duty diſtrained for.

Ibid. *Note,* No arrears of Hearth-money are to be deſtrained for after two years, from the time of their becoming due. And if any violence, oppoſition or injury be done to any Collector in the due Execution of his Office, Oath being made thereof before any one Juſtice, or chief Magiſtrate; ſuch Juſtice or Magiſtrate if they think fit, may commit the Offender to the Common Jayl for any time, not exceeding one Month.

Ibid. The Conſtables are to have Two pence in the pound paid them by the Collector, to whom they pay the Chimney-money by them Collected, and are to pay nothing to the Collectors for their Acquittances.

Cuſtoms Stat. 12. *Car.* 2. *cap.* 19. Sheriffs, Juſtices and Conſtables, are upon

upon requeſt to be aiding to any perſon, having a Warrant from the Lord Treaſurer, or any of the Barons of the Exchequer, or chief Magiſtrate of a Port for the ſearch of uncuſtomed goods, who (with ſuch their aſſiſtance) may in the day time enter into any Houſe, where ſuch goods are ſuſpected to be concealed, and in caſe of reſiſtance, may break upon the Houſe, and ſeize and ſecure ſuch goods.

But no Houſe is ſo to be entred, but within one Month after the offence ſuppoſed to be committed. And if the information whereby the Houſe comes to be ſearcht, do prove falſe, the party injured ſhall recover full coſts and damages againſt the Informer by Action of Treſpaſs. Ibid.

All Conſtables, Headboroughs, and other the Kings Officers and Subjects, are to be aiding and aſſiſting to all, and every perſon & perſons which are, or ſhall be appointed to manage his Majeſties Cuſtoms;---And ſuch as are---- Authorized by Writ of Aſſiſtance out of the Exchequer; are to take a Conſtable, Headborough, or other Officer Inhabiting near the place, and in the day time, to enter into any Houſe, Shop, Ware- Stat. 14. Car. 2. cap. 11.

Warehouſe, &c. And in caſe of reſiſtance, to break open Doors, Cheſts, &c. and to ſeize, and thence to bring any kind of Goods or Merchandiſe whatſoever prohibited and uncuſtomed, and ſecure it in his Majeſties Storehouſe, at the next Port.

Exciſe. Stat. 12. Car. 2. cap. 23. and 24. Gagers (or Exciſe-men) are to take a Conſtable with them when they enter by night into the Houſes of Brewers, Victualers, &c. to Gage their Coppers, Fats, or Veſſels, or take an account of their Beer, Ale, Wort, Perry, Sider, Strong-water, Methelign, Mead, Coffee, Chocolet, Sherbet or Tea; brewed, made, or diſtilled there.

Ibid. Conſtables are alſo upon Warrant from the Juſtices to levy the penalties on the goods of any perſon Convicted of any offence or forfeiture within the Acts for Exciſe, reſtoring the overplus. And for want of diſtreſs to carry the party to Jayl, till ſatisfaction be made.

They are likewiſe upon Warrant to them directed, to ſummon all Alehouſe-keepers, &c. to appear before the Commiſſioners of Exciſe, at the days and places in ſuch Warrants appointed.

CHAP.

CHAP. VII.

The Constables Office, relating to Ale-houses, Beggars, Rogues, Vagrants, Vagabond-Children, Labourers, Servants, and punishing Hedg-breakers or Wood-stealers.

IN the Fifth Chapter we have set forth the Constables duty in order to the suppressing and punishing the odious sin of Drunkenness: but as to Ale-houses, *&c.* these things are further to be known. *Ale-houses.*

That all that keep common Ale-houses, and sell drink without Licence, shall forfeit Twenty shillings to the use of the Poor, it being a good Conviction if it appear by the view of a Justice or Mayor; or by the parties confession, or upon the Oaths of two Witnesses which the Justices are impower'd to Administer. Which penalty, upon Warrant from such Mayor or Justice, the Constable is to levy by Distress, and *Unlicens'd.* Stat. 3. Car. cap. 3.

and in default of payment within three days to sell such distress, rendring the over-plus. And if the Offender have not goods, or pay not the said penalty within six days, the Justice may commit such Offenders to the Constable to be whipp'd. And if the Constable or inferiour Officer shall not execute the punishment, he himself shall be committed to Jayl, till the Offender be punished as aforesaid, or until such Constable shall have paid Forty shillings for the neglect of his duty, to the use of the Poor.

Suffering Tippling.

By the Stat. of the 21. of King *James, Ca.* 7. All Constables and Church-wardens shall in their Oaths be charged to present the following offences against the Statute of 1. *Jac. cap.* 9. Which is, That all Inn-keepers and Ale-house keepers that suffer any to continue Tippling in their Houses (except labouring men in Dinner-time, or Lodgers there, or upon sufficient grounds to be allow'd by two Justices) forfeits ten shillings to the use of the Poor: Or if they shall vend or sell less than a full Quart of the best Ale or Beer for a penny, or two Quarts of the small for one penny, they forfeit

Twenty-

Twenty shillings to the same use [But *I conceive this part of the Statute stands repealed ever since the Additional Excise imposed on Beer and Ale.*] The Conviction in these Offences is upon view of the Mayor or Justice, or Oath of two Witnesses (but according to 21 *Jac.* 7. One Witness, or his own confession, is enough to convict any.) And the aforesaid Penalties upon a Warrant from the Justice, *&c.* are to be levied by the Constables and Church-wardens, but the Distress is not to be sold till after six days; and then in default of payment all that time, to be appriſed and sold, rendring the overplus. If no Distress to be found, the Offender to be committed to Jayl, till the panalty shall be paid. And if any Constable, Church-warden, *&c.* shall neglect to execute such Warrant for Distress, or to certifie the Parties want of Goods within twenty days, such Officer for every such Offence, forfeits Forty-shillings to the use of the Poor, to be levied on their Goods by Warrant directed to any indifferent person from any one or more Justices, under their Hand and Seal.

Refusing to Lodge. Stat. 5. Edw. 4. cap. 3.

Every Common Inn-keeper, or Alehouse keeper, refusing to lodge a Traveller, he proffering to pay ready money for his victuals, *&c.* The Constable ought to cause him to be Indicted at the Assizes or Sessions, where he may be Fined and Imprisoned. Or the Party grieved may bring an Action of the Case against the Inn keeper or Alehouse-keeper. But they are not bound to Lodge, or find Victuals without ready money first paid, if required. *Cok. 9. Rep. fol. 87.*

Rogues, Beggars, &c.

A main Branch of our Constables Office, relating to the punishment of Beggars and Rogues, we shall the more enlarge thereupon. And first, let us see who by the Law are adjudged and deemed to be Rogues, Vagabonds, and sturdy Beggars.

Stat. 39. Eliz. cap. 4. and cap. 17. 43. Eliz. cap. 2. 1 Jac. cap. 7. 21 Jac. cap. 28. Resol. Judges 13. 15. Dalt. chap. 47.

1. All and every such Persons above the Age of Seven years, Man or Woman, Sole or Covert, that wander from their usual place of abode; every where begging, or if they do not beg, if they wander and loiter abroad without a lawful Passport, or not being able to give a good account of their Travel, are to be counted Rogues.

2. All

2. All Scholars and Sea-faring-men, that beg, wandring Persons using unlawful Games, Subtle Crafts or Plays, or pretending themselves to have skill in Physiognomy, Palmistry or the like, or to be Fortune-tellers, or Figure-casters.

3. All Proctors, Patent-gatherers, (except for Fire) Collectors for Jayls, Prisoners or Hospitals wandring abroad, Fencers, Bearwards, Common Players of Interludes (or Drol-Actors) and Fidlers, or Minstrels wandring abroad.

4. All Juglers (Hocus pocus Gentlemen, and slight of hand Artists) Tinkers, Pedlers and petty Chap-men, and Glass-men. To which we may add our Scotch-Cloth men, wandring abroad, especially if they be not well known, or have not a sufficient Testimonial.

5. All counterfeit *Egyptians* (or *Gypsies*) not being Felons, all Persons delivered out of Jayls, who beg their Fees, or otherwise do Travel begging, such as go to or from the Baths, and do not pursue their Licence; Souldiers and Mariners that beg, and counterfeit Certificates from their Commanders;

all Labourers which wander abroad out of their respective Parishes, and refuse to work for wages reasonably taxed, having no Livelihood otherwise to maintain themselves; and such as go with general-Passports, not directed from Parish to Parish.

All these are accounted Rogues, Vagabonds, and Sturdy Beggars.

Besides these; All Servants that leave their Services (*viz.* out of one City, Town, or Parish, to serve in another) without the Testimonial requir'd by the Statute, or with a false one. And such Persons as are sick of the Plague (I conceive 'tis meant, if they belong to Houses wherein any are sick) wilfully going abroad in Company against the command of Officers, are to be punished as Vagabonds. But none are to be sent to the place of Birth, or last Habitation, but wandring Rogues: for those that beg in their own Parishes, or in the High-ways, without the appointment of the Over-seers, are to be sent to the House of Correction.

Of the Puniſhment of Rogues and Beggars.

1. All Conſtables are to uſe their beſt endeavours to apprehend all ſuch Vagabonds, Rogues, or Sturdy Beggars, which ſhall be found and taken wandring, or begging, within their reſpective Precincts; or, they forfeit Ten ſhillings for every neglect. And if any other perſon bring a Rogue, or Beggar, to one of theſe Officers, he muſt take hold of him, and puniſh him according to Law, or otherwiſe he forfeits Twenty ſhillings, Stat. 39. Eliz. cap. 4.

2. After ſuch Rogues and Beggars are apprehended, the Conſtable, Headborough, or Tything-man, aſſiſted by the Miniſter, and one of the Pariſhioners of the place; is to ſee them ſtripped naked, from the middle upwards, and that he be openly whipp'd, until his, or her body be bloody.

3. After this whipping, the Parties muſt be ſent away from Pariſh to Pariſh, or Tything to Tything, to the place of their Birth; and if that cannot be known, then to the place where they laſt dwelt, by the ſpace of one

whole year before ſuch puniſhment, there to be ſet to work; and if that cannot be known, then to the Town through which they laſt paſſed unpuniſhed; and when they come there, if it cannot be diſcovered where they were born, or laſt dwelt, then are they by that Conſtable (or as ſome ſay, from Conſtable to Conſtable) to be conveyed to the Houſe of Correction, or Common Jayl of that County, to be employed in work, or placed in ſome Service, and ſo to continue by the ſpace of one year; or in caſe they be not able in body, that Town is to keep them till they be placed in ſome Alms-houſe within the ſame County. But in order to this ſending them away, ſuch Vagabonds are to have a Teſtimonial under the Hand and Seal of ſuch Conſtable, Tything-man, *&c.* and the Miniſter of the place, teſtifying the day and place of his puniſhment; the place to which he is to be conveyed, and the time limited for his paſſage thither; which time, if by his own default he exceeds, he is again to be whipped from time to time, till he arrive at the place limited. The ſubſtance of which Teſtimonial is to be entred

entred by the Minister in a Register Book kept for that purpose, on pain of Five shillings for every default.

The form of such Testimonial for Conveying Rogues, Vagabonds, and Beggars.

Laurence Lazy, *a Sturdy, Vagrant Beggar, Aged about thirty years, short stature, black-hair'd, and lean Visag'd, was this One and twentyeth day of* Aug. *in the* 28th, *year of the Reign of our Gracious Soveraign Lord King* Charles *the Second,* &c. *openly whipped at* Tunbridge, *in the County of* Kent, *according to Law, for a wandring Rogue. And is assigned to pass forthwith from Parish to Parish, by the the Officers thereof the next straight way to* Tuddington, *in the County of* Bedford, *where he confesseth he was Born (or dwelt last by one whole year, if the case be such) and he is limited to be at* Tuddington, *aforesaid, within fifteen days now next ensuing, at his peril: Given under the Hands and Seals of* J. S. *Minister of* Tunbridge *aforesaid, and of* John Curd, *Constable, the day and year aforesaid.*

And Note, That a Juſtice of Peace alone, may under his Hand and Seal make ſuch a Teſtimonial, *Lamb.* 2c 6.

If any Conſtable, Tything-man, or Head-borough, be found negligent in the due Execution of this Statute, in manner aforeſaid, he forfeits Ten ſhillings, as we told you before; and all ſuch perſons as ſhall in any kind diſturb or hinder ſuch execution of the Law, forfeits Five pounds, and to be bound to the good Behaviour: and therefore, where a Rogue or Beggar is to be conveyed from Pariſh to Pariſh, 'tis a forfeiture of Five pounds for any Officer that ſhall refuſe to receive them; or, that having received, do not convey them to the next Conſtable in the way that they are to paſs.

Reſol. Judges. Sect. 13. and 14.

Every perſon ſhall apprehend ſuch Rogues as he ſhall ſee or know reſort to his Houſe, to beg or receive any Alms, and ſhall carry them to the next Conſtable, or otherwiſe ſhall forfeit Ten ſhillings.

Stat. 1. Jac. cap. 7.

Conſtables or Tything-men neglecting to ſearch for Rogues upon the Juſtices Warrant, or failing to appear at their meeting, to give an account what Rogues have been puniſhed, or

Stat. 7. Jac. cap. 4.

ſent

ſent to the Houſe of Correction, or neglecting to convey ſuch to the houſe of Correction, as by Warrant are to be ſent thither, are liable to ſuch Fine as the Juſtices think fit, not exceeding Forty ſhillings.

Any Juſtice of the Peace may reward any perſons who ſhall apprehend and bring before him any rogue, vagabond, or Sturdy Beggar, by granting to ſuch perſons under his Hand and Seal to the Conſtable, or Tything-man of the place, through which the Rogue did paſs unapprehended; ordering him to give ſuch perſon two ſhillings for every Rogue ſo taken. And if the Conſtable refuſe to pay it, the Juſtices ſhall proceed againſt him according to the Statute, 1 *Jac. cap.* 7. and Compel him to pay his forfeiture; and out of the ſame to allow the ſaid two ſhillings, with ſuch further allowance, for loſs of time, as the Juſtice ſhall think fit. Stat. 1. Jac. 7. 14. Car. 2. cap. 12

If any perſon ſhall apprehend any Rogue on the confines of any County, who paſſed through any Pariſh of another County unapprehended, then the party muſt carry him to ſome Juſtice of Peace of the ſaid County, through which he paſſed, who (upon a Certif- Stat. 14. Car. 2. cap. 12.

eate of ſome Juſtice of the County, where ſuch Rogue was Apprehended. is to grant his Warrant to the Conſtable, *&c.* which if he refuſe, the Juſtice is to proceed againſt him for ten ſhillings forfeited by neglect, and cauſe him to pay the ſame, or ſo much thereof as he ſhall think fit, to the party for loſs of time.

Ibid. Whereas Conſtables, Tything-men, *&c.* are at great charges in relieving, carrying with Paſſes, and conveying Rogues, *&c.* It is Enacted, that all Conſtables, *&c.* ſo out of purſe, with the Church-wardens, Overſeers of the Poor, and other Inhabitants of the Pariſh, may make a Rate, to be confirmed under the Hands and Seals of two Juſtices: And if any perſon refuſe to pay ſuch Rate, then the Conſtable by Warrant from two Juſtices of Peace, may levy the ſame on their Goods, rendring the overplus, *&c.*

Stat. 39. Eliz. cap. 4. 1 Jac. cap. 7. Dalt. chap. 47. Two Juſtices of Peace (whereof one of the *Quorum*) by Warrant under their Hands and Seals, may cauſe to be levied all and every the ſaid Fines, Forfeitures, or Penalties againſt perſons neglecting their duty, in Apprehending and Puniſhing Rogues and Beggars,

Beggars, by Distress and Sale of the Offenders Goods, after due Conviction, which must be either by confession of the Party, or proof of two Witnesses before the said Justices.

And because the Execution of these Laws is so far required in these Laws, therefore for their better direction in placing and sending of Rogues, these things (said to be resolved by the Judges at *Westminster*, soon after the making of the said Statute of 39 *Eliz. cap.* 4.) are to be observed.

1. If a Rogue say he was Born at such a place, and it cannot be made appear to the contrary, he must be sent thither. Resol. Judges. Sect. 4. and 5. Dalt. cap. 47.

2. If the Husband or Wife have an House, and one of them, or both, Rogue about, they ought to be sent to the Town where the House is: And so of an Inmate.

3. The Wife, and all Children under seven years of age, being Vagrant, must be sent to the Husband; and if he be dead, then with the Wife where she was Born, or dwelt last; And Vagrant Children above seven years old, must be sent to the place of their Birth: And if the Vagrant Parents, with their Chil-

Children under seven years of age, be placed at the place of Birth of the Parents, or their last dwelling; if afterwards the Parents, or either of them dye, or run away, yet the Children once setled, must remain there still, and may not be sent to their place of Birth, though after they grow to the age of seven years.

4. The Wife being a Vagrant, ought to be sent to the Husband, though he be but a Servant in another Town.

The Rogue, whose place of Birth, or dwelling cannot be known, having a Wife, or Children under seven years of age; they must go with the Husband to the place where they were last suffered to pass through without punishment, where the Children must be relieved with the work of their Parents, though such their Parents be committed to the House of Correction.

6. Constables are not to post away such Vagrants as shall be taken by them, or sent unto them, that are desperately sick, or Women ready to be delivered, not to deliver them to the next Constable after Sun-set.

7. If any of these Rogues shall appear to be dangerous to the inferiour sort

sort of people, as threatning, or offering any violence to them, or that will not be reformed from this Roguish life; as where he hath once been whipped and sent home, and doth afterwards wander again: Or when he shall say he was born and dwelt last in such a place, and in truth it is not so: In these Cases he is to be accounted *An Incorrigible Rogue.* And 'tis the duty of all Constables, meeting such person within their Liberties, to carry him before some Justice of Peace, there to be ordered by him according to the Statute.

Lastly: Persons that shall run from their Families, and leave a Charge to the Parish, are to be punished as incorrigible Rogues; and he that threatens so to do, may be sent to the House of Correction, unless he can give Sureties for the discharge of the Parish.

Labourers and Servants. Stat. 5. Eliz. cap. 4.

All Artificers or mechanick Tradesmen, fit to labour by the day, the Constable may, upon request to him made by any person that wants help in Hay, or Corn-harvest set on work; and if they refuse, he may set them in the Stocks two days, and one night. And the Constable neglecting his Duty herein, forfeits Forty shillings. By

Ibid. By the same Statute it is provided, That no person retained in Husbandry, or other Arts therein mentioned, shall depart, after the time of his Retainer therein expired, out of the City, Town, or Parish where he last dwelt, to serve in another, without a Testimonial in a Town Corporate, under the Hands and Seals of the chief Magistrate, and two Housholders, and in the Country, under the Hands and Seals of the Constable, and two Housekeepers of the Town or Parish where he served last; which Testimonial is to be Registred by the Minister, for which he is to have Two pence, and then to be delivered to the party.

But these Testimonials are now very seldom used, which is one great reason that people are so often deceived with bad Servants, and certainly deserves more to be regarded, the Law being very penal therein: For the Master that retains a Servant without such a Testimonial forfeits Five pounds, & every Servant which sheweth not such a Testimonial to the chief Officer in a Corporation, or to the Constable, Minister, or Church-wardens where he is to dwel, may be imprison'd till he can

Ibid. And dal. Ca. 31.

get

get one, which if not procured within One and twenty days, or if he produce a falſe, he is to be whip'd, and uſed as a Vagabond.

A Preſident ſhewing the Form of ſuch Teſtimonial.

Memorandum, *That* John Lock, *Servant to* Henry Piggot, *of the Pariſh of* Chiddingſtone, *in the County of* Kent, *husband-man, is Licenſed to depart from his ſaid Maſter, and is at his Liberty to ſerve elſewhere according to the Statute in this Caſe made and provided: In Witneſs whereof we have hereunto ſet our Hands and Seals, the* 24th. *day of* Auguſt, *in the* 28th. *year of the Reign of our Soveraign Lord,* King Charles *the Second,* Anno Domini, 1676.

John Aſhdown, *Conſtable of* Chiddingſtone.

John Harriſon, } *Houſe-holders*
William Colegate. } *there.*

Note,

Note, *If the Servant lived with a Woman, then say,* Is Licensed to depart from his Mistress *or* Dame, (*as she is*) *and if his Master be not an Husbandman, but a* Taylor, Carpenter, *or the like, name him accordingly in the Testimonial.*

Hedge-breakers, woodstealers. Stat. 43. Eliz. Ca. 7.

All such as shall be convicted before a Justice of Peace, for cutting and taking away of Corn growing, robbing of Orchards, breaking Hedges, and their procurers and receivers knowing the same, if they cannot give the party Injured such satisfaction as a Justice of Peace shall think fit, the Justice may then commit him to the Constable to be whipt for the first offence, and the like for the second; and if he refuse or neglect to see the same done accordingly, the Justice may commit such Officer to Jayl, till by his procurement it be executed on the Offender. Not, only Constables and Headboroughs, but any other persons, in every County, City, Town Corporate, or place where they shall be Officers and Inhabitants, are impowered to apprehend such persons as they suspect for having, carrying, or conveying away any bur-

Stat. 15. Car. 2. cap. 2.

then

then or boundles of any kind of Wood, Under-wood, Poles, or young Trees, Bark of any Trees, Gates, Stiles, Poſts, Pales, Rails, Hedg-wood, Broom, or Furz. And any Conſtable, Headborough, *&c.* by Warrant under the Hand and Seal of one Juſtice, may enter into the Houſes, Out-houſes, Yards, Gardens of ſoch perſons as they ſuſpect: And where they find any Woods, Underwoods, *&c.* to Apprehend the Parties ſuſpected, for cutting the ſame; and thoſe alſo in whoſe Houſes or places any ſuch woods, *&c.* ſhall be found, and carry them before a Juſtice; to whom, if the party cannot give a good and ſatisfactory account how he came by the ſaid wood, *&c.* by the owners conſent, or ſhall not within ſuch time as the Juſtice appoints, produce the party of whom he bought it; or ſome Credible Witneſs to depoſe upon Oath ſuch ſale of the ſaid Wood: Then ſuch perſon ſhall be deemed convicted of the cutting and ſpoiling wood, *&c.* within the meaning of the Statute of the 43. of *Eliz.* aforeſaid. And for the firſt offence, if they do not give the Owner ſuch ſatisfaction, and within ſuch time as

as the Juſtice ſhall limit, and likewiſe pay over and above down preſently, to the uſe of the Poor of the place, ſuch a ſum of money, not exceeding Ten ſhillings, as the Juſtice ſhall appoint: Then the ſaid Juſtice may commit ſuch party to the Houſe of Correction for any time, not exceeding one Month, or elſe to be whip'd by the Conſtable. And if he offend again, then to be ſent to the Houſe of Correction for one whole Month, there to be held to hard labour; and for the third offence, to be puniſhed as an incorrigible Rogue.

Ibid. If any perſon buy Wood, *&c.* of any juſtly ſuſpected to have Stoln the ſame: If on examination before a Juſtice, it be found ſo bought, the Juſtice may order the Buyer to pay the treble value thereof to the party from whom it was taken; and in default of preſent payment, grant a Warrant to the Conſtable to diſtrain for it: and for lack of diſtreſs, to commit the party to Jayl at his own charge, there to remain one Month without Bail.

But Note, None are to be puniſht by this Statute, who have been puniſht by any former Law for the ſame offence; nor is any to be queſtion'd unleſs

leſs it be within ſix weeks after the offence committed.

CHAP. VIII.

Shewing the Conſtables Office concerning Weights and Meaſures, Nets and Setting-Dogs, Malt-making, Tobacco-planting, Phyſicians, Plague, Forraign Laces, Iriſh Cattel, Purveyancing, Souldiers, Priſoners, High-ways, Clothiers, Sea-fiſh, Veſſels, County-ſtock, Gaming, &c.

Weights and Meaſures.

IN every City, Borough, and Market-Town, there ought to be common Weights & Meaſures Sealed, at which the Inhabitants may freely weigh, and the chief Officers of ſuch places, whether they be Conſtables, Bailiffs, or others, are upon requeſt to mark and ſign ſuch Weights & Meaſures to any of the Kings Subjects, taking for the marking of every Buſhel, one penny. Stat. 8. Hen. 6. cap. 5. 11. H. 7. cap. 4.

Conſtables are required to ſearch & examine if any buy or ſell by any other Buſhel Stat. 22. Car. 2. cap. 8.

Bushel than *Winchester* measure, containing, eight Gallons to the Bushel, or Strike, Sealed by the Clark of the Market; and if any person doth not strike the same even with the brim: And any Constable may seize and break such other Measure, and present the Offender at the next Sessions.

Nets and Setting-Dogs. Stat. 7. Jac. cap. 11.

Constables or Headboroughs upon a Warrant under the Hands and Seals of two or more Justices of the Peace, have power to search the Houses of persons suspected (except those that keep Warrens, or have Forty pounds *per annum* of Inheritance, or are worth 400 pounds in Goods) for Setting-Dogs, or Nets to take Pheasants and Patridges, and may take away their Dogs, and cut their Nets.

Malt-making. Stat. 2. Edw. 6. cap. 10. 21 Jac. cap. 28. 3. Car. 1. cap. 4.

The Constable and Bailiffs of any Town ought to view and search all Malt made, or put to sale within their Liberties; and if they find any ill, or deceitfully made, or mingled, they may, with the advice of one Justice of Peace, sell the same at such rate as the Justice thinks fit.

Malt is said to be evil or deceitful: *First*, When in the making thereof in *June*, *July*, or *August*, it has not seventeen

teen days, and in any other Months three weeks at the least. *Secondly*, When by rubbing, treading and fanning, they have not taken out of every Quarter half a Peck of dust, or more. For the neglect of which, the Seller forfeits Twenty pence a Quarter; *Thirdly*, When 'tis made of Mow-burnt, or spired Barley, or mixed good and bad together, and for this the Seller forfeits Two shillings a Quarter; but they must be Prosecuted within one year, and it extends not to such as make Malt for their own provision only.

Tobacco planting Stat. 12. Car. 2. cap. 34.

All Sheriffs, Justices, and Constables, upon information that there is any Tobacco Set, Sown, or Planted, or growing within their Precincts, are within ten days to cause the same to be burnt, pluckt up, or destroyed; unless it be in a Physick-Garden, or not exceeding half one Pole in a place.

Physicians. St. 1. M. par. 1. Sess. 2. cap. 9. 23 H. 8. cap. 1.

Constables in *London*, and seven miles round are to be aiding to the President of the Colledge of Physicians, and persons Authorized by the said Colledge for the due Execution of the said Laws relating to the Physicians, Apothecaries, and Chirurgeons.

If

Plague. Stat. 1. Jac. cap. 31. If a perſon dwelling, or being in a Houſe Infected with the Plague, be commanded by the Conſtable to keep the Houſe, and ſhall notwithſtanding willfully go abroad, having any Infectious ſores upon him, it is Felony. And though he have no ſuch ſore, he is to be puniſhed as a Vagabond, and be bound to the good Behaviour.

Ibid. Every Conſtable neglecting to levy the money as theyare appointed by the Juſtices, or chief Magiſtrate of Towns Corporate, according as ſhall be taxed for the Relief of the Poor, Infected with the Plague, forfeits for every offence Twenty ſhillings.

Forreign bone-lace &c. St. 14 Car. 2. cap. 13. Conſtables upon Warrants to them directed, are to ſearch within their reſpective Precincts, in the Shops, Warehouſes and Dwelling-houſes of ſuch perſons as ſhall be ſuſpected to have any forreign Bonelaces, Cut-works, Embroideries, Fringes, Bandſtrings, Buttons, or Needle-works made beyond the Seas; and to ſeize the ſame.

Iriſh Cattle. St. 18. Car. 2. cap. 2. & 20. Car. 2 Conſtables, Tythingmen, Headboroughs, Church-wardens, or Overſeers of the Poor; or any of them within their reſpective Liberties, Pariſhes or places, are to take & ſeize all great

great Cattel, Sheep, or Swine, or any Beef, Pork, or Bacon, brought from *Ireland*, the one half to be disposed of to the use of the Poor of the Parish where they were seized, the other half to his or their own use that shall seize the same, *&c.* And if there shall be any fraudulent agreement, or unfaithful connivance in the first seizure, they may lawfully be afterwards seized again, wherever they shall happen to be, the former seizure in another Parish notwithstanding.

Purveyance or carriages for the King.

Formerly there were divers particulars incident to the duty of Constables, by divers old Statutes concerning purveyance, or taking up Provisions and Carriages for the King and his Court; but now those Statutes are obsolete and of no force: For by a late Statute, the method for these things is thus provided. That the Clark of the Kings Carriages, three days before his Majesties Arrival, shall give notice to the two next Justices to the place, to provide such a number of Carts and Carriages, which the Constables upon their Warrant are to press and provide; each Cart furnisht with four able Horses, or four Oxen and two Horses, to be paid

Stat. 13. Car. 2. cap. 8.

six

ſix pence a mile for every mile they go laden, to be paid in hand at lading, and not to go above one days Journey: Which if any ſhall refuſe without reaſonable cauſe, he forfeits Forty ſhillings, to be levied by the Conſtable on a Warrant. And if the Juſtice or Conſtable take any bribe to ſpare any fit perſon from ſuch Carriages, or preſs more Carriages than directed, he forfets Ten pounds.

2 Car. 2. cap. 24. No Pre-emption (or priviledge of buying before others) ſhall be henceforth allowed the King, or any of the Royal Family in or out of any Market, but the Subjects may diſpoſe of their goods as they pleaſe: And if any ſhall make purveyance or impreſs any Carriage otherwiſe than as aforeſaid, one Juſtice and the Conſtable at the requeſt of the party grieved, may commit him to Jayl, and Indict him next Aſſizes or Seſſions, or the party grieved ſhall recover treble damages, and treble coſt on an Action.

Stat. 14. Car. 2. cap. 20. Two or more Juſtices by Warrant from Commiſſioners of the Navy, or Maſter of the Ordinance, are to cauſe Conſtables to provide Carriages for twelve miles round from the place of lading,

lading, who are to have twelve pence a mile for every load of Timber, and eight pence a mile for every Tun of other Commodities; and ſuch as refuſe, being warned, to ſend their Teams, forfeit Twenty ſhillings, but they muſt be paid in hand, and are to travel no further, nor work any longer than the Juſtices ſhall order.

Maimed Souldiers Stat. 43 Eliz. cap. 3.

Conſtables and Church-wardens are to levy by diſtreſs and ſale all moneys rated on any perſon within their Liberty, for the relief of the poor maimed Souldiers and Mariners, and pay it to the High Conſtable, or they forfeit Twenty ſhillings.

Relief of Priſoners Ibid.

In the ſame manner they are to levy what is rated on any for the relief of the Priſoners in the *Kings Bench* and *Marſhalſeas*, or for the ſuccour of Hoſpitals and Alms-houſes, and to pay it to the High Conſtable, on pain of Ten ſhillings.

Bridges. Stat. 21 Hen. 8. cap. 3.

Four Juſtices are Authorized to allow a Tax for repair of any decayed Bridges in the High-way, which muſt be Aſſeſſed by the Conſtable and two of the ſufficienteſt Inhabitants in the Pariſh.

High way St. 2. & 3. Phil. and Ma. c. 8. Conſtables, Tything-men, and Church-wardens of every Pariſh are upon the *Munday* or *Tueſday* in *Eaſter*-week, with the conſent of the Major part of the Pariſh then preſent (notice having been given the *Sunday* before in the Church) to chuſe two or more Surveyors for their High-ways, and give notice thereof to the parties choſen, in writing, under the penalty of Five pounds to be forfeited by the ſome Conſtable, *&c.* in default thereof.

Stat. 14. Car. 2. cap. 6.

Ibid. Conſtables of *London* and *Weſtminſter*, upon Warrants to them directed in that behalf, are to levy by Diſtreſs all Penalties forfeited by any perſon, about repairing the High-ways and Sewers in and about the ſaid Cities, and for want of diſtreſs, or non-payment within ſix days after demand, the offender may be committed to Jayl till payment.

Stat. 22 Car. 2. cap. 12. Conſtables (as well as Surveyors) willfully ſuffering any travelling Waggon or Cart to go or paſs through any part of their Liberties, in any Road or publick High-way with above five Horſes in length, forfeit ſuch Fine as a Juſtice ſhall think fit, not exceeding Forty

Forty ſhillings; of which ſum of forty ſhillings every owner of ſuch Cart or Waggon, forfeits one third part towards mendment of the ways; another third part to the Poor; and the laſt third part to him that diſcovers the Offender.

Of the Surveyors duty we ſhall treat particularly hereafter.

Clothiers Conſtables on requeſt to them made, are to be aiding and aſſiſting to the Wardens and Aſſiſtants for regulating the trade of Worſteds, and other ſtuffs called *Norwich* ſtuffs, made within the City of *Norwich*, or County of *Norfolk*. Alſo within the Weſt Riding of the County of *York*, they are, upon Warrant from the Juſtices of Peace, Maſter and Wardens of the Corporation of Clothiers, within the ſaid Riding, or any thirteen of them to levy all ſuch Fines, Penaltites, and Forfeitures as ſhall grow due from any Clothier by Virtue of that Statute of the 14. *Car.* 2. *cap.* 5.

Stat. 14 Car. 2. cap. 5.

Stat. 14 Car. 2. cap. 31.

Sea-fiſh. Where any offence is committed about the erecting new Wears along the Sea-ſhore, or in any Harbour, or Ha-

Stat. S. Jac. cap. 12.

ven, or Creek, for the destruction of any Spawn or Sea-fish in any Wear, or other Engine, within five miles of the mouth of any Haven; or with fishing in any Hay-net or Drag-net under three Inches meash, the Constables and Church-wardens, by Warrant, may levy the forfeiture by distress or sale of the Offenders goods, returning the over-plus; the penalty is Ten shillings, and the loss of their Nets,

Vessels. St. 23 *H.* 8. cap. 4. All Mayors, Sheriffs, Bailiffs, and Constables (where no Wardens of Coopers be) are impowred to search, view, and gage Barrels, Kilderkins, Firkins, and other Vessels, to be made within their Liberties; and to have the advantage as the Wardens of Coopers in *London* have.

County Stock. Stat. 13. Eliz. 2. & 3. The Constables and Church-Wardens of each Parish, if the Parishioners disagree, have power to rate and allot within their Parish their Assessment for the shire-stock, wherewith the said Parish was charged at the Quarter-Sessions, and may levy the same upon any of the Parishioners by distress and sale of his goods, restoring the over-plus.

Every

Every Mayor, Sheriff, Bailiff, Conſtable, or other Miniſter of Juſtice, within their ſeveral limits, on pain of forfeiting Forty ſhillings for every default, ought to ſearch once every month at the leaſt, Places where unlawful games ſhall be uſed, and may Arreſt and Impriſon both the Keepers of ſuch places, and the Gameſters; and if any of the ſaid Officers ſhall know of any Trades-man whatſoever, Mariner, Fiſher-man, or Water-man, that doth play at Tables, Dice, Cards, Tennis, Quoiting, Logating, or any other unlawful Game out of *Chriſtmaſs*, or out of their Maſters houſe in the *Chriſtmaſs*, unleſs by the Maſters Licenſe, that hath one hundred pound *per annum*, may commit them to Priſon, till they give Sureties to the King, not to uſe the ſame again. *Gameing.* St. 23. H. 8.

FH
MVSEVM
BRITANNICVM

CHAP. XI.

The Power and Duty of High Conſtables alone.

Stat. 4 Ed. 4. cap. 1. CLothiers ſhall pay their Carders, Spinners, and other Labourers in lawful money, and not in Wares, under pain to forfeit three times ſo much as their wages: And muſt deliver them their Wool by due weight: And carders, ſpinners, fullers, dyers, ſheremen and other Labourers, ſhall do their work faithfully, on pain of forfeiting double damages. And the Conſtable of the Hundred may hear and determine the complaints therein on each ſide, by due examination of the parties, and for non-payment of the ſaid forfeitures, may commit thoſe they ſhall find guilty to the Jayl, till the ſame be paid.

Stat. 39 Eliz. cap. 20. The ſaid High Conſtables are impowered to enter into any Houſe, Lands, or other place to ſearch for any Tenters, Ropes, Rings, Head-wrenches,

or

or other Engines for ſtretching of Cloth; and if they find any, to deface them: And if the owners ſhall afterwards uſe them, theſe Officers may ſeize and ſell them, diſtributing the money to the Poor.

High Conſtables muſt pay over what money they received from Church-wardens Aſſeſſed on any Pariſh for relief of poor Priſoners, under the penalty of Five pounds, at the next Quarter Seſſions, to the Collectors appointed by the Juſtices at the Seſſions, appointed to receive it: As likewiſe what they ſo receive for the relief of poor Priſoners, in the *Kings Bench* and *Marſhalſeas*, under pain of Twenty ſhillings; and the ſame thing for moneys received, for maimed Souldiers and Mariners, on pain of Forty ſhillings. Stat. 14 Eliz. cap. 5. Stat. 43 Eliz. cap. 8.

The ſaid High Conſtables are likewiſe to preſent unto the Juſtices at their Seſſions or monthly meetings of their Diverſions, and cauſe their Conſtables, Headboroughs, &c. in their reſpective Liberties, to make return to them of,

1. The Names, Surnames, additi-

ons and qualities of all Popiſh Recuſants, as well Houſe-keepers as Lodgers, reſiding within their precincts.

2. Such as continue Tipling in Inns or Ale-houſes, eſpecially on the Lords-day or Holy days, and ſuch as they find drunk, together with thoſe that entertain them.

3. All profane Swearers or Curſers, and the number as near as they can of their Oaths. Victualers ſelling Beer or Ale without Licenſe. Perſons that keep Gaming places, and the names of thoſe that play there.

4. Refuſers to Watch or ward, harbourers of Inmates, or of ſuch as are like to charge the Pariſh.

5. The defaults of Petty Conſtables for not puniſhing Beggars, Rogues, *&c.*

6. The names of ſuch as live idlely without Eſtates, at their own hands, ſuſpicious Perſons, Whores, Night-walkers, Mothers of Baſtards like to charge the Pariſh; ſuch as refuſe to take poor Pariſh Children Apprentices.

7. Defects of High-ways and Bridges, the Names of thoſe that ſhould repair them, Scavengers neglecting

lecting their duties, and the Names and places of ſuch as commit common Nuſances, by laying down ſoil, dirt, or aſhes in the Streets, or refuſing to pave the Streets where uſually paved.

8. Of Bakers ſelling Bread too light, Brewers vending Ale to Unlicenſed Victuallers, Foreſtallers and Regrators of any kind of Victuals in Markets,

Laſtly: Whoever can prove any of the ſaid Offences, are to be ſummon'd to ſuch Seſſions to give Teſtimony.

And ſo much ſhall ſuffice for the Office of Conſtables.

THE OFFICE OF Church-wardens.

CHAP. I.

The Nature of their Office.

What. CHurch-wardens are Officers, yearly choſen to take Care, ſee to, and preſerve the Church and goods belonging thereunto, as Books, Communion Cups, and other decent Ornaments and Furniture of the Church, which they find there at their coming into this Office; or at any time during its continuance.

When

When this Office firſt begun, I ſhall not trouble my ſelf, or the Reader, to enquire, becauſe that pains is hardly like to be rewarded with ſatisfaction. 'Tis agreed, that they are very ancient, and are to be choſen in every Pariſh by the joynt conſent of the Miniſter and Pariſhioners, wherein if they cannot agree, then the Miniſter ſhall chuſe one, and the Pariſhioners another, and this is to be done in *Eaſter* week.

How choſen, canons 1 year of K. Jam. Can. E. 9, & 10.

But where an ancient Cuſtom of chuſing is in any Pariſh contrary to this Canon, ſuch Cuſtom is ſtill to be obſerv'd, of which we have many Preſidents, Prohibitions having been granted; as Warners *Caſe*, p. 17. Jac. B. R. Evelins *Caſe*. 15. Car. 1. B. R. *&c.*

Are a Corporation.

An Attorney cannot be made a Church-warden: If he be choſen, and refuſe, and ſo be uſed in the Spiritual Court, a Prohibition ſhall be granted, as in *Willſons* Caſe, *p.* 14. *Car.* 1. *B. R.*

Theſe Church-wardens having the charge of the Church Furniture, and it being part of their duty, if there be any want of thoſe things to provide them for this purpoſe (in favour of the Church)

Church) the better to enable them herein, the Law doth make them a kind of Corporation. That is to ſay, they are perſons able by the Name of Church-wardens to purchaſe or take moveable Goods or Chattels, and to ſue or be ſued at Law, for, or about ſuch Goods for the uſe and Benefit of their Pariſh; and therefore.

12 Hen. 7. fol. 27. *Finches Law.* l. 2. cap. 17.

A man in his life time may give, or bequeath by his laſt Will, money, or other moveable things to the Church-wardens or Pariſhioners of a Pariſh, either for repairs about the Church, or to buy decent Ornaments for the ſame: *Book of Entries, fol.* 576.

But they cannot take or preſcribe to have Lands to them and their Succeſſors, nor can they have any Action at Common Law to recover any Goods ſo given or bequeathed to them, or otherwiſe belonging to them, of which they never had poſſeſſion (but it ſeems in ſuch Caſe they have their remedy only in the Spiritual Court, or in equity.) But if the Church-wardens are once poſſeſſed of any Goods or Ornaments belonging to the Church, and afterwards the ſame things are taken from them, then they have the ſame remedy

Finch, ubi ſupra, *Kitchin.* P. 277.

Equity.

remedy at Common Law as other men, *viz.* To Indict the takers, if Stoln; or if otherwiſe converted or abuſed, as a Bell broken, *&c.* to ſue them by Action, in which they recover Damages, not to their own but the Pariſhes uſe. And though the Church-wardens from whom the Goods were taken, be out of their Office, yet it ſeems their ſucceſſors may ſue and recover as aforeſaid. *Hadmans Caſe. 3. part. Crook. Rep.*

This veſting of Goods in Church-wardens, is ſo far favour'd by the Law, that it will ſomtimes create a Gift to them, even without any writing or words at all: For if a man buy a Bell, and hang it up in the Steeple, or make and ſet up a Pew in the Church, without any expreſs Donation, yet by the very act they become ſo dedicated to the Church, that if he, or his, afterwards ſhould go to take them away, or remove them, the Church-wardens might ſue them for ſo doing. *10. H. 4. fol. 9. Kitchin. p. 277.*

Yet theſe Officers have no ſuch property in the Goods of the Pariſh, as thereby to have power to give, ſell, releaſe, hurt, or impair them: For if they do ſo, the Pariſhioners (though their year be not up) may elect new *3 Edw. 4. fol. 7.*

ones

ones, who may have an account againſt their Predeceſſors.

Tr. 12. Jac. in B. R. *per curiam.* If the Organs be taken out of the Church, the Church-wardens ſhall have an Action of Treſpaſs for the ſame, though they were taken by the Vicar himſelf, for they belong to the Pariſhioners, and not to the Parſon. Nor can he ſue any perſon that takes them in the Eccleſiaſtick Court.

8 H. f. 9. But as touching any Eſtate of Lands, or profits of any Lands, the Church-wardens are not to intermedle. And therefore, if any perſon ſhall break the Walls, Windows, or Doors of the Church; cut down the Trees in the Church-yard, or eat up the graſs there; in this Caſe, not the Church-wardens, but the Parſon or Vicar, muſt bring the Action.

Smith and Pannels Caſe, M. 16 Jac. in B. C. If the Church-wardens preſent in the Eccleſiaſtical Court that *I. P.* one of their Pariſhioners is a railer, and a ſower of diſcord amongſt his Neighbours, a Prohibition lies to ſtop their Suit; for this Caſe belongs to the Juriſdiction of the Leet, and not to the Spiritual Court, unleſs ſuch railing were in the Church, or Church-yard.

If

If they ſue *M. W.* in the Eccleſiaſtick Court, for that he, and all thoſe forowing that Eſtate, uſed to treat the Pariſhioners with Cakes and Ale, *&c.* at their going in Proceſſion, a Prohibition lies, for that this claim is in the nature of a Corrody, and not to be ſuffer'd. Ch. *of* Uffington's *caſe* Hill. 15. Car. 1. *in* B. R.

Seats in the Church.

The Church-wardens are to repair the Seats in the Church, but the diſpoſal of them who ſhall ſit in them, belongs of common right to the Ordinary (or Biſhop) of the Dioceſs, ſo that he may place or diſplace them as he pleaſe; except

1. The Seats in the Chappels belonging to Noblemen. Rolls *Caſes.* part. 2. fol. 288.

2. Where a Man and his Anceſtors having ſuch an Eſtate, have uſed to repair a certain Seat or Iſle of the Church, and to ſit there, and none elſe; there the Ordinary cannot diſplace him, but a preſcription of ſitting there, is not good without preſcribing to repair alſo.

CHAP.

CHAP. II.

The Church-wardens Duty about Reparations, making of Rates and Preſentments, and in what things they are to joyn with the Overſeers or Conſtables.

CHurch-wardens by the Common Law are bound to take care that the body of the Church, and the Tower (or Steeple) be from time to time ſufficiently repaired; but if the Chancel (which in moſt, if not in all places, is to be repaired by the Parſon) or any Iſle, or part of the Church, which any man claims by preſcription to himſelf, or his Houſe, be in decay, the Church-wardens are not bound to Repair it.

37 H. 6. 30. 12 H. 7. 10. Cannon 20. & *alius.* They are likewiſe to take care that the Church, and Church-yard be kept decent and clean; to provide Books of Common-Prayer, Books of Homilies, a Parchment Book for Regiſtring Chriſtnings, Weddings, and Burials; as alſo Fonts,

Fonts, Pulpits, Tables, Cheſts for Alms, Communion Cups, and other requiſite Ornaments and Furniture, and a Cheſt with three Locks and Keys for keeping the ſame in, and Bread & Wine for the Sacrament, according to the number of the Communicants.

For defraying the neceſſary charges of theſe things, they may impoſe Rates upon the Pariſh; which muſt be done by the Church-wardens, with the aſſent of the major part of the Pariſhioners, upon a publick warning given them before to aſſemble to that purpoſe. But if upon ſuch fair notice the Pariſhioners will not come, it ſeems the Church-wardens, and Over-ſeers of the Poor alone, or the major part of them may make the Rate. *Juſtices Caſe. Coo. Rep. 15.*

But here we muſt diſtinguiſh between Church-Reparations, and Church-Ornaments, or requiſite accommodations for the Worſhip and Service of God in a Church. Towards the charge of the firſt, a perſon is chargeable in reſpect of his Lands towards the laſt only, in reſpect of his dwelling or habitation and perſonal Eſtate.

1. Un-

1. Under the Term Church-Reparations, are comprehended, the Walls of the Church, and Church-Steeple, the Church-yard, Walls of Stone or Brick, or Rails, as the custom is; the Windows, Iron-bars and Glass; the Roof of Timber, with Laths, Nails, Priggs, Dogs and Bolts of Iron; the Covering of Lead, Tile-slates, or Shingles; the Floor with Stone or Paving-tile; the Doors with Locks and Keys, Stairs, Floors, Bells, Wheels and Ropes in the Steeple. The Pulpit and the Pews, or Seats not made by private men by custom. All these are to be done by Land-rate, though the Occupier of such Lands, lives in another Parish.

2. By Church-Ornaments, &c. are meant, the Communion-Table, and Coverings thereof; the Communion Cups, the Bread and Wine, the Bible and other Books appointed by Law; the Surplice, Pulpit-cloath and Cushion; washing the Communion-cloaths, Candles when there is occasion. The Clerk and Sextons Wages, and the expences of Church-wardens and Sidesmen about the necessary affaires of the Parish. And all these are to be raised ratably

ratably by the Parishioners, and not by Out-dwellers.

And here Note, That though a Man Inhabiting one Parish, and having Lands which he uses and occupies in another, may be charged for Church-repaires to the Parish wherein the Lands lie, because he may come there when he lists, and is charged in respect of the Land: Yet if he Lease out this Land in the other Parish, reserving Rent, he shall not then be charged in such other Parish, because there is now a Parishioner and Inhabitant who may be charged. *Andrews Case.* Trin. 11. Jac. in C. b.

Where there is a Chappel of ease in a Parish, and part of that Parish have used time out of mind, to repair such Chappels, and there to hear divine service and marry; only they always buried at the Mother-Church, here they must still Contribute to the Repairs of the Mother-Church; for the Chappel was erected only for their ease, not to prejudice the rest of the Parish. Mich. 13. Jac. in C. R. Heb. Rep.

If the major part of the Parish agree to have a Bell more than they were wont to have, (or it seems, if they will have an Organ, the Law is the same) which is bought, and they make a Rate M. 2 Car. 1. in B. R.

Rate for paying for it; this ſhall bind the reſt of the Pariſhioners, though they never conſented to, or did oppoſe it, otherwiſe a few covetous, obſtinate people might hinder whatever ſhould be intended for the Churches Ornament.

As to the Church-wardens preſentments in the Eccleſiaſtical Courts, the practice uſually is to Swear them to preſent, according to a certain Book of Articles, at the ſame time delivered to them by the Biſhop of his Surrogate: But where perſons refuſing to take ſuch Oath, have been excommunicated, divers Prohibitions have of late been granted, commanding the Biſhops to take off ſuch their ſentences, becauſe the impoſing of ſuch Oath is againſt Law, as well for that Eccleſiaſtick Courts, by the Common Law, have not power to Adminiſter an Oath in any other cauſes, but ſuch as are either Matrimonial or Teſtamentary: As alſo becauſe the ſame is forbidden by the Statute, *Car.* 2. which took away the Oath *Ex Officio.*

Church-wardens of Arundels Caſe, in C.B.P. 28. Car. 2.

But though they may not be compelled to take ſuch Oath, yet if they ſhall not preſent according to the Articles

ticles delivered, no doubt but they may for ſuch their neglect be proſecuted in the Eccleſiaſtical Court; and in that caſe no Prohibition lies.

But by the Canons themſelves, Church-wardens or Sides-men are not bound to exhibit their preſentments above once a year, where it hath been no oftner uſed: Nor above twice a year in any Dioceſs whatſoever, except at the Biſhops Viſitation; for which preſentment, the Regiſter ſhall not take above Four pence for one year, on pain of a months ſuſpenſion from his Office for every offence. But the Church-wardens may voluntarily preſent oftner if they pleaſe. Canon. 116.

One of theſe two times is to be about ten days before Eaſter: And the Parſon or Vicar is to joyn with them in their preſentments; and if they refuſe, then the Parſon or Vicar (or in their abſence the Curate) may themſelves preſent offences to their Ordinaries at all ſuch times, or as oft elſe as they find occaſion. Can. 113. 118.

Church-wardens, *&c.* after their preſentments exhibited at any of the two times aforeſaid, or when elſe they do it, ſhall not be any farther troubled Can. 117.

for

for the ſame, except it evidently appear that they did willingly and wittingly omit to preſent ſome publick offence or crimes which they know committed, or could not be ignorant that there was then a publick fame of them; or unleſs there be very juſt cauſe to call them to complain their former preſentments. And in caſe of willfull omiſſion, the ordinary ſhall proceed againſt them (ſays the Canon) as in caſes of perjury is uſed in the Eccleſiaſtical Court, *De hoc tamen quere.*

Furthermore by the Canons.

Can. 19. Church-wardens are to ſee that all their Pariſhioners reſort to their Pariſh-Church duly all *Sundays* and Holy days, and continue there the whole time of Divine Service, in which time they are not to permit any to walk, ſtand idle, or talk in the Church or Church-yard: They ſhall likewiſe call upon ſuch as neglect coming to Church, and if they amend not in ſuch admonition, they muſt preſent them.

Can. 88 They are to ſuffer no Plays, Feaſts, Banquets, Suppers, Church-Ales, Drinkings, Temporal Courts or Leets, Lay-

Lay-Juries, Musters, or other profane usage to be kept in the Church, Chappel, or Church-yard: Nor the Bells to be rung superfluously on Holy-days or Eves abrogated by the Common-prayer Book. Nor at any other time without a good cause to be allowed of by their Minister and themselves.

They shall not suffer any man to Preach within their Churches or Chappels, but such as shall shew their License. And also they are to see that the peace be duly kept in the Congregation; and that all persons excommunicated be kept out of the Church. Can. 50. & 8. 5.

The Church-wardens upon the expiration of their year, or within one month after, are to give a just account of what they have received, and disbursed, and to deliver up what money, or other things belonging to the Church, they have remaining in their hands, to their successors, by Bill indented: And if they refuse so to do, they may either be presented at the next Visitation Court; or the succeeding Church-wardens may have an Action of account against them for the same at Common Law, wherein they shall be allow'd all necessary disbursements, Can. 89. 8 Ed. 4. fo. 6.

ments, and expences incident to their Office about the affairs of the Pariſh, and the reſt will be recovered againſt them.

Caſes wherein the Church-wardens are jointly concern'd to act with other Officers, or equally impowred with them by ſpecial Statutes.

1. They are to joyn with the Overſeers of the Poor in the execution of their whole Office; for they have an equal authority and charge with them therein. The particulars we ſhall ſhew under the next Title, when we come to declare the Office of ſuch Overſeers.

2. They are to joyn with Conſtables in Apprehending ſuch perſons as diſturb Miniſters; in levying forfeitures for Swearing or Curſing, or for killing Hares, Pheaſants, or Partridges: As likewiſe for Tipling and Drunkenneſs, Prophaning the Sabbath, deſtroying Fiſh unlawfully; Levying twelve pence for not coming to Church every *Sunday*, &c.

4. They are alſo to joyn with Conſtables in making Rates for maimed Soul-

Souldiers or Mariners, and conveying Priſoners to Jayl, and ſeizing *Iriſh* Cattel, receiving Rogues brought to them, and paſſing them away: In chuſing Surveyors, and appointing days for working in the High-ways; chuſing Scavengers in *London*, and levying the penalty of Five pounds upon the Parties goods that is not Buried in Woollen, according to the Act. 18 *Car. 2. cap.*

All which being particularly expreſſed in the Conſtables Office, to avoid vain Repetition, we thither refer the Reader.

An Appendix to the Duty of Church-wardens, concerning the deſtruction of Noiſome Fowl and Vermine.

IN every Pariſh the Church-wardens and ſix other of the Pariſhioners deſired by the Church-wardens to aſſiſt for that purpoſe, ſhall yearly in one of the Holy-days in *Eaſter* week, St. Eliz. cap. 15. 14 Eliz. cap. 11.

and at any other time when it ſhall be needful, Tax and Rate every perſon having the poſſeſſion of any Lands or Tithes within their pariſh, to pay ſuch ſums of money as they ſhall think meet, according to the quantity of their Lands or Tithes, for and towards the deſtruction of Noiſome Fowl and Vermine: And all ſuch as refuſe, or do not pay the ſame within fourteen days after demand made by the ſaid Church-wardens, or one of them, ſhall forfeit for every time Five ſhillings, which together with the ſum Aſſeſſed, ſhall be levied by diſtreſs on ſuch parties goods bythe ſaidChurch-wardens, or one of them; the ſame Diſtreſs to be ordered and uſed as Diſtreſſes for Amerciaments in Leets.

And as well the ſaid Rates as Penalties ſhall be yearly by the Church-wardens,or one of them,delivered by Bills indented to two honeſt ſubſtantial perſons of the Pariſh, elected and appointed by the Church-wardens, named diſtributers of the proviſion for the deſtruction of Noiſome Fowl and Vermine. And if the Church-wardens and ſix Inhabitants, or the ſaid diſtributers, or any of them, ſhall refuſe or make.

make default in execution of this Act, or any part thereof, such Offender forfeits Five pounds for every default.

These Distributers are to pay those that shall destroy any Noisome Fowl or Vermine as follows.

For every 3 heads of { *Old Crows, Choughs, Pies or Rooks.* } 1 d.

For every 6 heads of { *Young Crows, Pies, or Rooks.* } 1 d.

For every 6 Eggs of any of these Fowls, one penny.

For every dozen of *Stares* heads, one penny.

For the head of every { *Merton, Hawes, Furse-kite, Mold-kite, Buzzard, Cormorant or Ring-tail.* } 2 d. *and for* 2 *Eggs of them* 1 d.

For every *Iron* or *Ospraies* head, four pence.

For the head of every { *Woodwall, Pye, Jay, Raven, Kite, Kingsfisher, Bulfinch, or other Bird that ſpoils fruits.* } 1 d.

For the head of every *Fox* or *Gray*, twelve pence.

For the head of every { *Fitchew, Polcat, Stote, Weaſel, Fair, Badger, or Wild-cat.* } 1 d.

For every 3 heads of *Mice* or *Rats*, one penny.

For every head of a *Mole*, *Warp*, or *Want*, one half penny.

All which heads, *&c.* ſhall be kept in a fitting place, and once in a Month brought forth before the Church-wardens and Taxers, or any three of them, by the ſaid Diſtributers, who ſhall then account what money they have diſburſed for the ſame; and then they ſhall be burnt, conſumed, or cut aſunder. And what money remains in the Diſtributers hands, ſhall be delivered over by them at their years end, to ſuch as are choſen to ſucceed them. But

But Note, this Act ſhall not extend to give any Liberty or Authority to any perſon or perſons whatſoever, to uſe or exerciſe any means or Engines for the deſtruction of *Crows*, *Choughs*, *Rooks*, or other the aforeſaid Vermine, in any place, or places, to the deſtruction or diſturbance of the building, or breeding of any kind of *Hawks*, *Herns*, *Egritts*, *Paupers*, *Swans*, or *Shovelers*, or to the deſtruction or hurt of any *Doves*, *Dove-houſes*, *Deer*, or *Warren* of *Conies*: Nor ſhall extend to give or appoint any ſum or ſums of money, to be given, paid, or diſtributed to any perſon or perſons for the heads of any *Buzzard*, *Ring-tail*, *Herne*, *Pole-cat*, *Fitchew*, or *Stote*, that ſhall, or may be taken in any Warren, or Ground employed for *Conies*; nor to the taking of any *Snares* in *Dove-houſes*; nor to the deſtruction or bringing of any *Kite* or *Raven* killed in any City or Town Corporate, or within two Miles of the ſame.

OF THE

OFFICE

AND

DUTY

OF

Overſeers of the Poor.

CHAP. I.

Of the Nature of their Office, in ſetting to work the Poor, and putting out Apprentices.

THE Overſeers of the Poor are Officers yearly appointed to be joyned with, and aſſiſtant to the Church-wardens in the over-ſight and

and ordering of the Poor of the Pariſh, anſwering in nature and effect to the Office of Deacon in the Primitive Church, though now Cuſtom has brought that word to ſignifie an Officer of a very different kind.

Theſe overſeers ought to be perſons of competent wealth, and a good Conſcience, faithfully to perform their duty to the Poor committed to their charge, they are to be choſen and made by two or more of the Juſtices of Peace of the County (whereof one muſt be of the *Quorum*) dwelling in, or near the Pariſh for which they are elected, which Juſtices are yearly under their Hands and Seals, at *Eaſter*, or within one month after, to appoint two, three or four ſubſtantial Houſe-keepers (according to the greatneſs of the Pariſh) to be Overſeers of the Poor, and in default of ſuch appointment, every Juſtice of that diviſion forfeits Five pounds. Stat. 43 Eliz. cap. 2. and 3. 1. Jac. cap. 25. 3 Car. 1.

And here Note, that the Law ſays theſe Officers are to *be joyn'd with the Church-wardens to look after the Poor.*

So that 'tis plain, the Church-wardens have an equal Authority with them in the buſineſs, and may be puniſhed

niſhed if they neglect their duty herein. But if there be but one Church-warden in a Pariſh, it may ſuffice: And the Overſeers of the Poor, and this Church-warden may execute the Office well enough.

2. *Note*, That the Major part of theſe Overſeers and Church-wardens may do any thing belonging to their Office without the reſt. But they ought to have the allowance of two Juſtices (*Quorum unus*) to every thing they do, either ſpecially, or at leaſt generally.

Ibid. 3. Theſe Overſeers (and Church-wardens too with them) or ſuch of them as not hindred by juſt cauſe (to be allowed by two Juſtices) are once a Month to meet in the Church on *Sundays*, after Evening Prayer, to adviſe together concerning matters appertaining to their Office, and in the Execution to uſe all diligence, on pain of Twenty ſhillings forfeiture on every default.

Their Office is chiefly to take care for ſetting the Poor to work, relieving them when unable to work, and ſotling them when deſtitute of Habitations, ſo as no Pariſh be unjuſtly charged.

1. Theſe Officers are to ſet to work the Children of ſuch whoſe Parents they ſhall think not able to keep and maintain them, and all ſuch perſons Married or Unmarried, as having no means to maintain themſelves, uſe no ordinary and daily trade of life to get their living by; and all ſuch likewiſe as can get no work elſewhere. And if any by them ſo appointed to work, ſhall refuſe ſo to do, or to work for the wages Aſſeſſed, any Juſtice of Peace may ſend them to Jayl, or the Houſe of Correction. *Setting to work.*

And the better to anable them to ſet ſuch poor people at work, the ſaid Overſeers and Church-wardens, with conſent of two, or more Juſtices (one of the *Quorum*) may ſet up, uſe, and follow any Trade, Myſtery, or Occupation only for the ſetting to work, and relieving the poor of their Pariſh, notwithſtanding any Statute to the contrary. Stat. 3 Car. 1. cap. 4.

Poor Apprentices. 2. In pursuance of this end of their Office, they may with such consent of Justices, and ought to bind forth to be Apprentices, such Peoples Children whose parents are unable to maintain them; concerning which Note,

Sat. 43 Eliz. cap. 2. Dalt. cap. 31. 1. That the Children so put forth ought to be above seven, and under fifteen years of Age, when they are first Bound, and they may bind the Man-child till twenty-four years of Age, and the Woman till twenty-one years of Age, or that she shall be Married, which shall first happen.

Resolution of the Judges. Anno. 1633. 2. These Officers may with the Justices help compel any man within the Parish, whom they think fit, to take such a poor Child, with, or without money according to the Age of the Child, and condition of the intended Master. And if such Master and they cannot agree, then the Justices are to determine it.

3. They may put them to Weavers, Masons, and the like Mechanick Trades,

Trades, as well as to Husbandry or Houſewifery; and though a man be not a Trades-man, but a Knight, Gentleman, Clergyman or Yeoman; and though he do not keep Houſe, but be a Lodger, if he uſe Husbandry, Cloathing, Graſing, *&c.* or however his caſe be, if by his calling and profeſſion he have occaſion to entertain, and muſt uſe Servants of like quality, he may be compelled to take ſuch Apprentices: Yet if he be Rich, and will live ſo, as to pretend he has no occaſion, yet he may be forced either to take one himſelf, or give money towards placing him with another, all which ſhall not at all excuſe his ordinary Aſſeſſment to the Poor.

4. If any ſuch fit perſons refuſe to take ſuch Apprentices, they may be Preſented and Indicted for the ſame at the Aſſiſes or Seſſions, upon the Statute, 43. *Eliz. cap.* 2. So may the Childrens Parents, if they refuſe to part with them, not being able to bring them honeſtly up, or intice them away Dalts cap. 40.

being

being bound. And if the Children refuſe to go to be Apprentices when ordered, they ſhall be ſent to the Houſe of Correction.

5. This putting forth to Apprentice muſt be by Indenture, not an agreement by words, and the Indenture muſt be between the Juſtices, Church-wardens, and Overſeers of the Poor for the time being, or the ſaid Church-wardens and Overſeers, with the conſent of the Juſtices, and the Apprentice on the one part, and him or her (if a Feme Sole) that takes the Apprentice on the other part, Thus,

---

The

The form of an *Indenture*, where a Child is put out by the *Pariſh*.

THis *Indenture made the Twenty-fourth Day of* Auguſt, *in the Twenty-eighth Year of the Reign of our Soveraign Lord*, Charls *the Second, King of* England, *&c.* Anno Dom. 1676. *Witneſſeth that* W. D. *and* T U. *Overſeers of the Pariſh of* Cowden, *in the County of* Kent, *and* I. S. *and* F. K. *Church-Wardens of the ſame Town, by and with the allowance and conſent of* Sir. I. R. *Knight*; *and* T. L. *Eſq*; *two of his Majeſties Juſtices of the Peace for the ſame County, have placed, and by theſe preſents do place and bind* I. G. *being a poor Fatherleſs Child* [*or* I. G. *Son of* H. G. *of the ſaid Pariſh of* C. *Labourer, unable by reaſon of his Age and great Charge, to maintain and bring up his ſaid Son*] *as an Apprentice with, and to* G. M. *of* C. *aforeſaid, Husbandman, and*

is

is an Apprentice with him the ſaid G. M. *to dwell from the day of the date of theſe preſents, until he the ſaid* I. G. *ſhall come to, and attain the Age of Twenty four years* [*or if it be a Girl, the Age of Twenty-one years, or be Married, which ſhall firſt happen*] *according to the Statute in that Caſe made and provided, by and during all which time and term, the ſaid* I. G. *ſhall the ſaid* G. M. *his Maſter well and faithfully ſerve in all ſuch lawful buſineſs as the ſaid* G. M. *ſhall put him the ſaid* I. G. *upon, according to his power, wit, and ability; and honeſtly and obediently in all things ſhall behave himſelf towards the ſaid* G. M. *his Children and Family; and the ſaid* G. M. *for his part Promiſeth, Covenanteth, and Agreeth, that he the ſaid* G. M. *the ſaid* I. G. *in the Art and Skill of Husbandry* [*or what elſe his calling is*] *in the beſt manner that he can, or may, ſhall teach and inform, or cauſe to be taught or informed as much as thereunto belongeth, and he the ſaid* G. M. *knoweth; and alſo during all the ſaid term, to find and allow unto his ſaid Apprentice ſufficient Meat, Drink, Linnen, Wollen, Shoes, Stockings, Waſhing, Lodging, and all other things neceſſary or meet for ſuch an*

Appren-

Apprentice: In Witneſs whereof, the ſaid Parties firſt above-named, to theſe preſent Indentures interchangeably their Hands and Seals have put, the day and year firſt above-written.

Let the Church-wardens, Overſeers and Apprentice Seal and Deliver one part to the Maſter, and the Maſter the other to them. And it may be convenient that the two Juſtices Indroſe a ſignification of their conſent on the backſide.

6. Money given to put out poor Children Apprentices, is to be employed by the Corporation or Parſon, Conſtables, Church-wardens, and Overſeers, accordingly, on pain to forfeit every of them five Marks; and the party taking money with ſuch Apprentice, ſhall give Security by Bond, to repay it at the ſeven years end, or within three months after: or if the Apprentice die in the mean time, then within one year after his death, ſo as the money may be employed for putting out of others. Stat 7 Jac. cap. 3.

7. *Note*,

7. *Note*, That an Apprentice cannot be diſcharged but by four Juſtices at leaſt in open Seſſions, or by agreement in Writing under his Maſters hand. And if the Maſter ſhall put the Prentice into Apparel, 'tis ſuch a gift in Law, that he ſhall take it way, if he afterwards part with the Prentice.

CHAP. II.

The Overſeers duty in Relieving and ſetling the Poor, making Rates, &c.

THere are three kinds of poor people.

1. Poor by Impotency, as Aged, Blind, Diſtracted, *&c.*

2. Poor by Caſualty, as maimed in their lawful Callings, undone by Fire, *&c.*

3. Poor by Riot and Idleneſs, as Common Drunkards, Loiterers, Pilferers, *&c.*

The

The firſt of theſe are wholly to be provided for; the ſecond, that have ſtrength of body, but not ſufficient means to maintain themſelves, are to be ſet on work, and beſides allowed ſome Relief proportionate to their neceſſities: But the third ſort are to be ſent to the Houſe of Correction, there to be held to hard labour, to maintain themſelves without Charging the Town.

Fathers, Grand-fathers, Mothers, and Grand-mothers, being able, and alſo the Children and Grand-children in like manner of every poor Impotent perſon, ſhall relieve ſuch poor Relations, as ſhall be Aſſeſſed at Quarter Seſſions, and forfeits Twenty ſhillings a month as long as he refuſes: But it ſeems Baſtard Children are not within the Law compellable to maintain their reputed Parents, nor can the Juſtices compel any man to do it that lives out of their County. Stat. 43 Eliz. cap. 2.

If a poor man want a Houſe, the Overſeers by conſent of the Lord of the Mannor, may erect a Cottage on the Waſt, and lodge Inmates therein, notwithſtanding the *Stat.* 31. *Eliz. cap.* 7. They may likewiſe Licenſe their poor Ibid.

poor to beg within their own Pariſh, but not in the High-way; and any Inhabitant that ſerves or relieves at their door any but thoſe of their own Pariſh, having ſuch Licenſe, forfeits Ten ſhillings a time for ſo doing.

St. Jac. cap. 7.

Rates, Stat. 43 Eliz. cap. 2.

For enabling them ſo to relieve the helpleſs Poor, theſe Officers, or the greater part of them may raiſe weekly, or otherwiſe, of every Parſon, Vicar, and other Occupier of Land, Houſes, Tithes, Coal-mines, or ſaleable Underwoods, *&c.* in their Pariſh, ſuch ſum as they ſhall judge fit and neceſſary, which Rate or Tax muſt be allowed by two Juſtices (one of the *Quorum*) and then by their Warrant they may levy it by diſtreſs, on the goods of ſuch as ſhall refuſe to pay it, or in default of goods, the refuſer may be committed to Priſon till it be paid.

But here Note,

1. Theſe Rates are to be made according to mens viſible eſtates real & perſonal within the place only, not for any Eſtate they may have elſewhere, and muſt be only on the Tenants or Occupiers of Land, not on Landlords as ſuch.

2. All

2. All Lands are chargeable with theſe Rates, which are uſually ſet by the pound; and for ſtock and goods 'tis generally thought reaſonable to follow the proportion of Lands; that is to ſay, an Hundred pound ſtock to be rated at five or ſix pound a year in Land.

If any find themſelves aggrieved by any Tax, they are to be relieved at the Quarter Seſſions.

Theſe Officers to preſerve their Pariſhes from an increaſe of charge, are often much troubled about keeping out and ſetling poor people that would obtrude upon them; wherefore obſerve, firſt,

1. That forty days reſidence quietly in a Pariſh ſhall be accounted a Legal ſettlement, provided it be not brought about by practice. St. 14 Car. 2. cap. 14.

2. If any ſtranger come into a Pariſh, in any Tenement, under Ten pounds a year, and refuſe to give Security to diſcharge the Pariſh, any two Juſtices (*Quorum unus*) on complaint of the Church-wardens or Overſeers within the forty days, may ſend him to the place where he was laſt Legally ſettled: And if any find himſelf aggrieved

grieved by the Juſtices, he may appeal to the Seſſions.

3. Yet any perſon may go abroad to work in Harveſt, or other employment with a Certificate from the Miniſter, one Church-warden, and one Overſeer, that he is in their Pariſh a ſetled Inhabitant, and in ſuch caſe, if he fall Impotent after he have been in a ſtrange place above forty days, this ſhall be counted no ſettlement, but he is to be returned to the firſt Pariſh.

Ibid 4. Perſons refuſing to go, or not remaining in the Pariſh where they ought to be ſetled, may be ſent by the Juſtices to the houſe of Correction.

Reſolution of the Judges. Sect. 24. 5. *A.* having Wife and Children, takes an Houſe in the Pariſh of *B.* for one year, during which time he is illegally turned out of poſſeſſion, then he takes a Houſe in another Pariſh, out of which he is put within two or three days, and wanting a place to ſhelter him, gets into a Barn, in a third place, where his Wife is delivered of another Child: In this caſe, they are all to be ſent to the Pariſh out of which they were firſt illegally forced.

6. One

6. One born at *S.* left that place ten years, and lived in *T.* taking a Houſe, and paying rent there for two or three years, and afterwards left that place alſo for ſix or ſeven years, and then came to *W.* in another County, and there was twenty weeks at work, but becoming impotent, did wander and beg, and being taken as a Vagrant, it was ordered he ſhould be paſſed and ſettled at *S.* where he was born. Bul. Rep 1. part. fo. 357.

A. lives in a Houſe at *B.* with his Children, but works in *C* being hired there by the year: In this Caſe his Children are ſettled in *B.* not in *C.* in Caſe of his death. If a Woman Unmarried be hired in one Pariſh, and there got with Child, and then goes into another Pariſh, and is there ſettled in Service, or otherwiſe, for two or three Months, and then is found with Child and delivered; in this Caſe ſhe and her Child ſhall be ſetled in this Pariſh where ſhe is, not ſent to the Pariſh where it was begot. Reſolut. Judg. Sect. 12.

Two next Juſtices may take order as well for the puniſhment of the Mother of a Baſtard Child, as alſo to compel the reputed Father to ſave harmleſs the Pariſh, by allowing mony weekly,

weekly, and to Impriſon him or her if that order be not performed; and for better diſcovery of the matter, the Juſtices may examine the Mother her ſelf upon Oath, concerning the reputed Father.

If *B.* have a Baſtard-Child by *M.* born in the Pariſh of *D.* ſix years ſince; and the reputed Father *M.* Marries another Woman, and they keep the Child the ſix years in another Pariſh, called *N.* and the Mother of the Child continues all the while at Service a ſingle Woman, and then the reputed Father dies poor: In this caſe the Baſtard-Child is to be ſent to the Mother firſt, if ſhe be able to maintain it; if not, it muſt be kept by the Pariſh of *N.* where it was ſo many years ſetled with the Father.

St. 43 Eliz. cap. 2. Dalt. cap. 40.

Laſtly: Theſe Officers, as well Church-wardens as Overſeers are to be aſſiſting to the Conſtables where they are required by ſome ſpecial Statutes, as for ſuppreſſing of Conventicles, for which ſee before in the title Conſtable: And within four days after their year ended, and others choſen, they are to make a true account to two Juſtices, of what money they have received and diſ-

diſburſed, what Wares they have in their hands, or in the hands of any of the Poor; what Prentices they have put out, *&c.* And what is ſo remaining, ſhall pay over to the new Overſeers; if they refuſe to account, the Juſtices may ſend them to the Jayl; if after they have accounted, they refuſe or fail to pay over the money in their hands to their Succeſſors, the ſame may be levied on their Goods by diſtreſs; and in default of ſuch diſtreſs, the refuſer to be ſent to Jayl, there to remain till payment and delivery of ſuch Arrerages and Stock.

Di-

Directions for Surveyors of the High-ways.

Surveyors, or rather Supreviſors of the High-ways, or Way-wardens, as they call them in ſome Counties, are Officers yearly appointed to look after the neceſſary reparation of the High-ways within that Pariſh or Precinct for which they ſerve.

St. 14. Car. 2. cap. 6. They are to be choſen on *Munday* or *Tueſday* in *Eaſter* week, by the Church-wardens, Conſtables, or Tithing-men, for the time being, with the advice of the Major part of the Inhabitants, and are to be two or more in number, according to the greatneſs of the Pariſh, and being choſen, muſt have notice thereof given them in writing by the Conſtables, *&c.* the next *Sunday* after.

2 & 3. P. & M. cap. 8. Immediately after ſuch notice, they are to take this Office upon them, on pain of forfeiting Twenty ſhillings: In the execution whereof note,

1. That

1. That they have to do with no ways, but the publick High-ways, called in Latine *Viæ Regiæ*, the Kings High-ways, for ſo ſays the Statute, High-ways leading to Market Towns, *&c.*

2. The Conſtables and Church-wardens, when they chuſe Surveyors, are to appoint ſix days between that and *Midſummer*, to be ſet apart for amending the High-ways, whereof next *Sunday* they are to give publick notice in the Church, and then the Surveyors are to ſee the ſame done and obſerved, that all Pariſhioners do their work thoſe days in manner following.

1. Every one having a Plough-land (which is counted as much as one Plough may plough in a day) in Tillage or Paſture in the Pariſh, or keeping there a Plough or Team, ſhall come forth with one *Wain* or *Cart* fit for carriage, provided with Tools, Oxen, Horſes, *&c.* according to the manner of the Country, and two able men who are to work in ſuch manner as the Surveyor ſhall direct, eight hours in every of theſe ſix days,

on pain of forfeiting Ten ſhillings for every default.

2. Every other Houſholder, Cottager and Labourer in the Pariſh being able to work, and not a Servant hired by the year, muſt come out himſelf, or provide ſome able man to work all the ſix days, on pain of forfeiting twelve pence for every default.

St. 18. Eliz. cap. 9.

3. Perſons that have no Carts, if they be in ſubſidy Five pounds in goods, or Forty ſhillings in Lands, or above, muſt find two able men.

If the Surveyors ſhall think any of the Ploughs or Carts needleſs any of the days, they may ſpare them, and inſtead thereof, require two able men who muſt come under pain of forfeiting twelve pence a man for every default.

Above ſix days. Every Pariſh is bound to repair their High-ways, and if they be defective, may be Indicted at the Common Law; wherefore if ſix days will not ſerve, the Surveyors may appoint more, and charge all perſons chargeable to come to work; and if he, who is to ſend a Team

Team, neglect, he forfeits Ten shillings, and the Labourer Eighteen pence for every day: But for all such days above six, the Surveyor is to pay them, wherein if they cannot agree, the next Justice out of the Parish is to determine it. St. 14. Car. 2. cap. 6.

Surveyors may take and carry away so much Rubbish and small broken Stones already digged out of any mans Quarry within the Parish, without the owners leave as they shall think fit, or gather loose Stones in any mans ground, but may not without leave dig for new Stones, nor take great Stones already digged: They may likewise dig for materials in probable places, as Sand, Stones, Gravel, &c. So as it be not in Houses, Gardens, Orchards, or Meadows of any man, nor may they make a Pit above ten yards in breadth or length; and they are to fill it up again at the Parish charge, or forfeit Five marks to the owner. St. 5. Eliz. cap. 31.

If there be not sufficient in the same Parish, they may so dig in the next Parish, under the limitation aforesaid, without paying any thing for the said Sand, Gravel, &c. only damages for spoiling Grass by carriage. St. 14. Car. 2. cap. 6.

St. 5. Eliz. cap. 15. Where any Watercourſe ſhall be in any Ditch or Ditches of the High-ways Annoying the ſame, it ſhall be lawful for the Surveyors to turn the ſame into any mans ground as ſhall ſeem moſt convenient.

Ibid: St. 18. Eliz. cap. 10. Owners of Grounds adjoyning to the High ways, not keeping their Hedges low, and cutting down Trees and Buſhes growing over the ſame ways, forfeit Ten ſhillings. And he that ſcours not the Ditches next adjoyning to the ground that is next to the High-way, that the Water may paſs the better out of the High way, ſhall forfeit Twelve pence for every Rod.

Any perſon ſcouring Ditches, and throwing the ſoil into the High-way, or laying Dung there, and ſuffering it to lie there ſix months, forfeits for every Load Twelve pence.

If the Surveyors neglect to preſent theſe offences within one month after they ſhall be committed, they forfeit for every default Forty ſhillings.

14 Car. 2. cap. 6. No hired travelling Wain, Waggon, Cart or Carriage, (other than Carts im-

imployed about Husbandry, and carrying home Harveſt, or in his Majeſties Service) ſhall be drawn, or go with above ſeven Beaſts, whereof ſix ſhall go double or in pairs; nor with above eight Oxen, or ſix Oxen and two Horſes, nor ſhall carry above two thouſand pound weight between *October* and *May*, nor above three thouſand pound weight between *May* and *October*, on pain of forfeiting Forty ſhillings, one part to the Surveyors, the other to the Overſeers, and the third to the Proſecutor; to be levied by diſtreſs on the Cattel; and in caſe the Penalty be not paid within three days, to be ſold, returning the overplus, charges of keeping and ſelling deducted.

Surveyors of the High-ways within one month after their year is out, ſhall give a true account to the Pariſh or Hamlet at ſome publick meeting appointed for that purpoſe, of all monys by him paid and received, and what moneys are in Arrear for Fines or Penalties. And what remains overplus in his hands, he ſhall pay over to the next Surveyor. And if he refuſe ſo to account, the Juſtices may commit him.

In *London* the Scavengers ſeem to ſupply the places of Surveyors in ſome meaſure, whoſe Office conſiſting in keeping the Streets clean, carrying away dirt, *&c.* is partly ſetled by the Stat. of 14. *Car.* 2. *cap.* 2. and partly by the cuſtom of the City.

An Appendix concerning Bridges.

Stat. 22. H. 8. c 5. Where a common Bridge is decay'd in the Kings High-way, and it cannot be known who, or what Lands are changeable to repair the ſame, four Juſtices of the Peace (*Quorum unus*) may within their limits call before them the Conſtables, or two of the moſt honeſt Inhabitants of every Pariſh within their City, or Town Corporate, wherein ſuch Bridge is, and with their aſſents may Tax every Inhabitant ſuch reaſonable ſum as they ſhall think convenient towards repairing ſuch Bridge, and repairing the High-ways for three hundred foot next the ends of any ſuch Bridge, which Tax muſt be particular, and not

not ſo much on a Hundred or Town, for then ſome few might be deſtrained upon for the whole.

The ſaid Juſtices may appoint Collectors to gather ſuch Taxes, and Surveyors to ſee the work done, both which Officers, and their Executors, and Adminiſtrators, ſhall truly account to the Juſtices, to be proceeded againſt at the General Seſſions.

If a Bridge be wholly in a City or Town Corporate, ſuch City or Town muſt repair it; if it be out of any ſuch City or Town, the whole County by common right is to repair it: And if part of a Bridge be in one County, and part in another, both ſhall contribute ſo far as it is in their limits reſpectively.

Such as are chargeable to repair a Bridge, may enter on any other mans Ground adjoyning, and lay their materials there, and the Owner ſhall have no Action, becauſe it is *in Commune bonum*, for a common advantage. Crompt 186.

All Bridges ſhall have ſufficient Walls or Poſts, and Rails on each ſide four foot high at leaſt, from time to time, to be kept ſufficiently repaired. 14 Car. 2. cap. 6.

As a Corollary to the whole we ſhall briefly ſet down the Chief Duties required by our Law, of Miniſters, Pariſh Clerks, Treaſurers of the County Stock, Governours, of Fairs, &c.

And firſt, of the Parſon or Curate.

Not to meddle with his Function as 'tis Spiritual, he is beſides,

To Regiſter the teſtimonial of every Servant, at his going from his Service, for which he may take two pence.

He is to be preſent to aid the Conſtable when Rogues are whip'd, to Regiſter the ſame, and ſend a Teſtimonial with them afterwards, on pain of Five Shillings for every default.

He

He hath power to Licenſe any to eat fleſh on days prohibited in the time of their ſickneſs, and for Regiſtring the ſame in the Church Book, he is to have four pence, *&c.*

Pariſh Clark.

A Pariſh Clark is a Lay-Officer of a Pariſh, whoſe duty is to attend upon the Miniſter and Church-wardens about holy things.

He is to be choſen according to the cuſtom of the place, if uſually the Pariſh have choſen him ſuch election is good, notwithſtanding any Canon; and therefore in ſuch caſe, if the Miniſter of the Pariſh, and the Biſhop or Chancellor of the Dioceſs chuſe another, the firſt ſhall ſtand. Hughs Rep. 5. Cand. & Plom. *Caſe.*

The Parſon of a Pariſh cannot put a Clark ſo choſen out of his place, without juſt cauſe, nor interrupt him; if he do, he may have an Action againſt him, as any other man that is diſturbed in any Lay-Office. March. Rep. 107.

His

His Office conſiſts chiefly in ſetting the Bread, Wine, and Cups decently on the Communion Table, providing Water for Chriſtening in the Font, making clean the Church, putting the Bible and Common-Prayer Book in their places for the Miniſter, reading the peoples part of the publick Prayers, beginning the Pſalm, Ringing the Bells, *&c.*

If any Pariſhioners with-hold his Wages, he may be relieved by Warrant from two Juſtices of Peace, who may order payment, and in default, order diſtreſs as hath been by ſome affirmed. But *Quere* now, for we ſuppoſe he muſt proceed according to the cuſtom of the place.

Treaſurers of the County-Stock.

Theſe Officers are appointed by the Seſſions, and ought by the Statute to be Subſidy-men, of ten pound a year Lands, or conſiderable perſonal Eſtate, and are annually changed.

The

The Juſtices in Quarter Seſſions charge every Pariſh ſo much towards relief of maimed Souldiers and Mariners, or of the Priſoners in the *Kings-Bench* and *Marſhalſeas*, which being Aſſeſſed by the Pariſhioners amongſt themſelves, the Conſtables & Churchwardens are to levy it, and pay it to theſe Conſtables, who muſt deliver it to theſe Treaſurers, who out of it are to relieve ſuch maimed Souldiers and Mariners, and give a juſt account to the ſucceeding Treaſurers. See St. 43. Eliz. cap. 3. and 14. Car. 2. cap. 9.

Governours of Fairs and Markets.

They muſt appoint a Toll-keeper to attend from Ten a Clock in the Forenoon till Sun-ſet, on pain of Forty ſhillings for every default on every Fair or Market day.

Such Toll-keeper may take due and lawful Toll for every Horſe, Mare, *&c.* And the parties to every bargain or exchange, muſt be preſent

ſent at taking ſuch Toll, and alſo the ſaid Horſe, Mare, *&c.* And the Toll-keepeer muſt Write down the Names, Sur-names, and dwelling places of all the ſaid parties, and the colour and mark of the ſaid Horſe, Mare, *&c.* on pain of Forty ſhillings.

31 Eliz. cap. 12. And if the Seller be unknown to ſuch Toll-keeper, he is to bring one credible Perſon that is well known to him, to Vouch his knowledge of the Seller, whoſe names are both to be entred, with the marks and price of the Horſe or Mare, of which the Buyer may, if he pleaſe, have a note ſubſcribed with the Toll-keepers hand; paying for the ſame, two pence: Every Toll-keeper ſuffering ſuch Sale without ſuch Voucher, and every Voucher giving falſe teſtimony, forfeits Five pounds, and the Sale to be void.

If a Horſe Stoln be legally ſold with Vouchers, the Owner may redeem him within ſix months after Stealing, proving the Horſe to be his, and repaying what the Buyer ſhall

shall Swear before a Justice, he paid for him; but if he be not sold openly in Market overt, and Toll'd and Vouched, the Owner may seize or Replevin him where-ever he finds him.

THE

THE OFFICE AND DUTY OF A London-Conſtable.

THough the Office of Conſtables in *London* be of the ſame nature, and directed by the ſame Statutes we have recited under the ſeveral heads of their duty: Yet ſince there is ſome variation, not only in the manner of their Election, but likewiſe in the form of their Oath, as it is uſually Adminiſtred: We ſhall here (becauſe nothing

thing of it is yet extant in any treatiſe of this nature) treat briefly of a *London* Conſtable, not intending to repeat all the aforeſaid branches of his Office in common with others throughout the Realm, but ſet down only ſome particularities wherein by Cuſtom they differ, or to which by Acts of Common Councel, *&c.* he is ſpecially obliged.

1. No man can be a Conſtable in *London*, unleſs he be a Freeman of the ſaid City; and whoever is ſo, is obliged to put up the Kings and City Arms over his door; or if he live in an Alley, at the end thereof to the Street, to ſignifie a Conſtable lives there.

2. The whole City being divided into twenty-ſix Wards, every Ward is ſub-divided into ſo many Precincts, each of which has its proper Conſtable.

3. The manner of making Conſtables here is thus: The Pariſh or Precinct preſent, or nominate, ſome of their Inhabitants as fit for this Office in the Veſtry, then at the Wardmote, which is always held on Saint *Thomas*'s day, the perſon ſo preſented, is either confirmed, or for ſome good reaſons, gets off, and another is appointed in his

Calthorp's Rep. p. 129.

his ſtead, ſo that the Election of Conſtables may properly be ſaid to be in the Wardmote, and then ſuch Perſons ſo ratified in the ſeveral wardmotes for the whole City, are to appear at the general Court of Aldermen, to be holden in the *Guildhall* on *Monday* next, after the Feaſt of the *Epiphany* (or *Twelfth-day*, as 'tis uſually called) next coming, where they are Sworn.

The Form of the Oath there Adminiſtred to them, being as follows.

YOU ſhall Swear that ye ſhall keep the peace of our Sovereign Lord the King, well and lawfully to your power: and you ſhall arreſt all them that make Conteſt, Riot, Debate, or affray in Breaking of the ſaid Peace, and lead them to the Houſe or Counter of one of the Sheriffs, and if ye be withſtood by ſtrength of miſdoers, you ſhall rear on them an out-cry, and purſue them from Street to Street, and from Ward to Ward till they be Arreſted: And ye ſhall ſearch

at all times (when ye be required by the Scavengers or Beadles) the common noyſance of your Ward, and the Beadle and Raker you ſhall help to rear and gather their Salary and Quarterage, if you be thereunto by them required: And if any thing be done within your Ward againſt the Ordinance of this City, ſuch defaults as ye ſhall find there done, ye ſhall then preſent to the Mayor & Miniſters of the City. And if ye be letted by any perſon or perſons, that ye may not duly do your Office, ye ſhall certifie the Mayor and Common Councill of the City, of the name or names of him or them that ſo let you.

Ye ſhall alſo Swear, that during the time that ye ſhall ſtand in the Office, and occupy the room of a Conſtable, ye ſhall once at the leaſt in every month, certifie & ſhew to one of the Clerks of the Mayors Court; and in the ſame Court, as well the Names as Sur-names of all Free men which ye ſhall know to be Deceaſed within the Pariſh wherein ye be inhabited, as alſo the Names and Sur-names of all the Children of the ſaid Free-men ſo deceaſed, being Orphans of this City. And thus you ſhall not leave to do, as God *you help.*

4. It

4. It hath ſomtimes been practiſed to admit perſons nominated for Conſtables, to Fine themſelves off, but this ſeems rather by Contrivance or favour for ſome particular reaſon than *De Jure*. But it is frequently allowed that the perſon choſen may hire a Deputy (fit and duly qualified for that purpoſe) to execute and ſerve the Office for him, and in that caſe ſuch Deputy is to be Sworn, and muſt anſwer for defaults as aforeſaid.

5. Though Conſtables in *London*, are choſen every one by and for ſome particular Precinct, yet he has power to ſerve Warrants, and execute his Office throughout the whole City, if required.

6. Therefore as to Watching a Nights at the Gates, *&c.* There are in every Ward ſo many Watchmen ordered by Act of Common Council. And by Cuſtom all the Conſtables in each Ward attend ſucceſſively, one every Night, according to his turn, to go the Rounds, and look after all other things belonging to his Office.

7. *Note*, Watching being a perſonal duty, every man is to ſerve therein, and

and the Conſtable and Beadle ought every Night to warn in ſo many of his precinct as he ought to have; and, 'tis ſaid, may inſiſt upon a Mans coming forth in his own perſon, without very juſt cauſe ſhewed to the contrary. But commonly for thoſe that do not appear themſelves, the Conſtable hires men, whom the ſaid parties reſpectively muſt pay by the Quarter, or otherwiſe, ſix pence a Night more or leſs, according to cuſtom; and if they refuſe, the Lord Mayor will compel them.

8. By the Articles of the Wardmote-Inqueſts, it appears that every Conſtable is from time to time to certifie to ſuch Inqueſt, the Name, Sur-name, Dwelling place, Profeſſion, and Trade of every perſon who ſhall newly come to dwell within his Precinct, that they may keep their roll perfect. And therefore the Conſtable is to make and keep a perfect Roll in like manner. As alſo once a month to ſearch & inquire what perſons be newly come there to lodge or ſojourn. And if he find by their own confeſſion, or by the Record of any of the Books of any Alderman of the City, that ſuch new comers are Indicted, Dalt. Rep. 138

dicted, or caſt out of any other Ward for evil and noyous life, and will not find Sureties for their good Abearance, both they and their Landlords, or receivers are to be warned that they depart; and if they refuſe, they may be Impriſoned, and their Landlords Fined as much as he was to have by the year, for ſuch Houſe or Room.

Act of Comm. Counc. Anno. 30 H. 8.

If any perſons in great Rains, or other times, ſweep the Soilage or Filth of their Houſes into the Channel, and the ſame is after conveyed to the *Thames*; every perſon ſo offending ſhall forfeit Twenty pence, and upon complaint made to any Conſtable next adjoyning, it ſhall be lawful for him to diſtrain for ſuch forfeiture; and the like penalty to be paid by every perſon that burns Ruſhes or Straw in his Houſe, or that waſhes in the common Streets or Lanes; the one moiety to the Mayor and Commonalty, the other to be divided between the ſaid Conſtable, and the party finder of the ſaid default; and every Conſtable refuſing or neglecting his duty herein, forfeits for every default Three ſhillings four pence.

Anciently the Citizens of *London* had

had a Houſe called the *Tun* in *Cornhil*, whereunto the Conſtables, Beadles and other Officers were to bring Treſpaſſers againſt the Peace, and perſons found in Adultery, Fornication, or under ſuſpicion thereof. But now the *Counters* and *Bridewel* are appointed receptacles for ſuch offenders.

'Tis ſaid that a Conſtable by the cuſtom of *London*, taking any perſon upon his Watch abroad, after ten a Clock at Night, may ſend them to the Counter till Morning (which will coſt them at leaſt a dozen ſhillings) But this ſeems *durus ſermo*, part of *ſummum jus*, which equity counts *ſummam injuriam*, where there is no breach of the Peace or other offence committed. This is certain, that as a Conſtable ought not to betray his truſt, debaſe the Kings Authority committed to him, nor neglect his duty in examining, ſuppreſſing and ſecuring all dangerous unruly perſons, or ſuch as by reaſonable probabilities appear ſuſpicious & guilty of ill deſigns; ſo ought he by no means on the other ſide, to wreck a private grudge, or gratifie a vain itch in himſelf of ſhewing his power to the utmoſt, for then he oftentimes goes beyond

yond it; and thereby ſome pragmatical men in Office have involved themſelves in after troubles. And though we have herein before particularly declared our ſentiment touching a Conſtables diſcharging a verbal commitment upon good cauſe after appearing, ſomewhat contraryto the vulgar conceit; yet we would not have any Officer run an hazard on our ſingle private opinion in a controverted point, but rather adviſe him to this ſafe and ſober courſe: To examine the party with deliberation, and hear the whole matter without paſſion, before he pronounce any poſitive words or order of Commitment, and then if he find juſt grounds for the ſame, to ſend him away to rights without hearkening to any after-parley or intreaties; or if he do, That then he take a General Releaſe from the party for his ſecurity againſt any Action of falſe Impriſonment that may happen to be brought.

Nimia Cautela non nocet.

FINIS.

FH
MVSEVM
BRITANNICVM